

November 24, 2009



TRANSCRIPT

November 24, 2009

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews, President

Councilmember Roger Berliner

Councilmember Valerie Ervin

Councilmember Michael Knapp

Councilmember Nancy Navarro

Councilmember Marc Elrich

Councilmember Nancy Floreen

Councilmember George Leventhal

Councilmember Duchy Trachtenberg

November 24, 2009



1 COUNCIL PRESIDENT ANDREWS:

2 Good morning, everybody, and welcome to a session of the County Council. We are going
3 to begin with a moment of silence, so please stand for that. I'm just going to mention at the
4 beginning of it that our thoughts are with the family and friends of Scott Doyle, a career
5 firefighter who passed away last week after suffering a traumatic brain injury in the spring,
6 and also with firefighter Sean Carroll, who, in the course of responding to a house fire and
7 working to rescue people, had burns to his hands. So we wish him a speedy recovery,
8 and our thoughts are very much with him and with the family and friends of the late Scott
9 Doyle. So please join me in a moment of silence. Thank you. We're going to now have a
10 presentation that is a proclamation in recognition of Ana Lopez, recipient of the Meyer
11 Foundation Exponent Award, by Councilmember Floreen.

12
13 COUNCILMEMBER FLOREEN:

14 Thank you, and if I could ask Councilmember Navarro, Councilmember Trachtenberg, and
15 Councilmember Ervin to join me. Miss Lopez, we're so proud of you. Ana is the executive
16 director of Community Bridges in Silver Spring. She has a Master's degree in Social Work,
17 was a member of the 2007 class of Leadership Montgomery, and has years of experience
18 working with Latino immigrant families and youth. And today, we're proud and grateful that
19 Ana has chosen to share her significant talents and experiences with Montgomery
20 County. Ana is the recipient of a \$100,000 grant from the Meyer Foundation. Way to go,
21 Ana. Of course, we already knew about the great work that Ana and Community Bridges
22 do for girls who are vulnerable to gang involvement, teen pregnancy, and academic
23 failure, and now we're really gratified that the Meyer Foundation has recognized her, too.
24 The Exponent Award, which is what Ana is receiving, is incredibly prestigious, and we
25 think that the foundation made a terrific choice this year. And, Ana, we have a
26 proclamation to read, but I'd like to let my colleagues say a few words in praise of you.

27
28 COUNCILMEMBER ERVIN:

29 First of all, we can't be more proud of you, Ana, than we are today. But Ana has been
30 around Montgomery County for a while, working with young girls, and we had recently
31 heard a report about women in poverty, and it's so important that the work you're doing
32 with young girls and young women to really hold them up and give them all the
33 background and all the support and all the love that you provide for all these girls in Silver
34 Spring and other places around the County. We're really, really proud, and of course the
35 Meyer Foundation found out about you, and you are being recognized for your great work.
36 So congratulations.

37
38 ANA LOPEZ:

39 Thank you.

40
41 COUNCILMEMBER NAVARRO:

November 24, 2009



1 Well, Ana, obviously, this is truly, truly an honor to recognize you. I think that you have not
2 only given of yourself in the work that you do, but you are an amazing role model for our
3 girls--our Latino girls, especially. It's so important for them to see people like you, like your
4 staff, that steps up every single day in the name of excellence to give them and empower
5 them to go forward. So I'm extremely proud of you and all the work that you have done.
6 You've taken this organization from its infancy, really, and developed it into an amazing
7 presence in the Long Branch area and beyond, and so congratulations, and
8 congratulations on your engagement, and please, you know, continue--continue doing
9 what you're doing because we really need you to continue to do that. So congratulations.

10
11 COUNCILMEMBER FLOREEN:
12 Duchy.

13
14 COUNCILMEMBER TRACHTENBERG:
15 Well, I want to congratulate you, Ana, on your accomplishments, and I also want to
16 recognize the fact that you're an extraordinary role model for young women in this County.
17 And, you know, as someone who's worked on women's issues for a number of years--for
18 a good 30 years--I know how important it is that people like you emerge in communities --
19 not only to provide leadership and inspiration, but really to do the heavy lifting, and I know
20 that's what your life has been about in this community. So I want to recognize that, and I
21 want to tell you that I support you, clearly, and I know my colleagues do, as well, as you
22 continue your heavy lifting for women here in this County, but also reach for the stars,
23 because I have a feeling that Ana Lopez is--her name will be known not just in
24 Montgomery County, but in other places, as well.

25
26 COUNCILMEMBER FLOREEN:
27 Absolutely. Well, thank you, to my colleagues, and, Duchy, you want to start us off reading
28 this proclamation?

29
30 COUNCILMEMBER TRACHTENBERG:
31 Mm-hmm. "Whereas, the Meyer Foundation Exponent Award celebrates visionary
32 nonprofit leaders and awards a \$100,000 grant to the recipient's organization to be used
33 for leadership development; and whereas..." Nancy?

34
35 COUNCILMEMBER ERVIN:
36 I don't have any glasses on.

37
38 COUNCILMEMBER NAVARRO:
39 I'll take mine off and give them to you.

40
41 COUNCILMEMBER TRACHTENBERG:
42 They're an accessory.

November 24, 2009



COUNCILMEMBER NAVARRO:

"And whereas, the Exponent Award is designed to support and sustain the most capable nonprofit leaders in the Greater Washington region..."

COUNCILMEMBER FLOREEN:

And...

COUNCILMEMBER NAVARRO:

And...

COUNCILMEMBER ERVIN:

"And whereas, Community Bridges works with girls ages 8-15 from low-income, predominantly immigrant families in Silver Spring and Takoma Park, helping them gain the skills and values necessary for their personal well-being, academic success, and development as change agents in the community, and..."

COUNCILMEMBER FLOREEN:

"Whereas, this year, Ana Lopez, executive director of Community Bridges, was selected as one of 5 recipients of this prestigious award; and whereas, under Miss Lopez's leadership, Community Bridges' operating budget has nearly doubled, the number of program sites has expanded from 5 to 15 schools, and the number of girls served has increased to more than 200; and whereas, last year, Community Bridges became one of only 75 nonprofits in Maryland to be certified under the Maryland Association of Nonprofit Organizations Standards for Excellence Program; now, therefore, be it resolved that the County Council of Montgomery County hereby honors Ana Lopez for her undying commitment to Montgomery County girls, their families, and their communities." Dated this 24th day of November in the year 2009 and signed by our Council President, Phil Andrews. We are so proud of you, Ana. And would you like to share a few words with us? Yeah, I'll hold on to this.

ANA LOPEZ:

Well, first I just want to say thank you so much to all of you because I have not done this by myself. All of you on the County Council have been incredible supporters over these last 4 years, since I've been executive director of Community Bridges, and have really helped me take this organization to the next level. So to all the incredible women behind me and to the men--

COUNCILMEMBER FLOREEN:

Good politician.

ANA LOPEZ:

November 24, 2009



1 Ha ha ha! I just want to reiterate just the importance of this work, you know? If a girl
2 becomes pregnant when she's a teenager, that's a sign of immediate poverty. If a girl--a
3 teenage girl from a low-income family drops out of school, it's a sign of immediate poverty.
4 And so, the work that we are doing not only is preventing these issues from happening
5 with the over 250 girls we serve weekly, it's really preventing a burden, an economic
6 burden, on our County down the road. And so I cannot thank all of you, and just especially
7 during these difficult times, I know how hard it is to support organizations like ours, but
8 every little bit has helped us, and so thank you.

9
10 COUNCILMEMBER FLOREEN:

11 Well, thank you, Ana. Go spend that money wisely. And with that, we have the ceremonial
12 picture. Come on up. Duchy, you want to get close to the...

13
14 COUNCIL PRESIDENT ANDREWS:

15 Congratulations, Miss Lopez. And thanks to the female members of the Council for doing
16 the honors. All right. All of us--all of us very much recognize the excellent work that's done
17 by Community Bridges and congratulate them on the recognition. We're now going to go
18 on to General Business, A-- announcement of the agenda and calendar changes. Miss
19 Lauer.

20
21 LINDA LAUER:

22 Good morning. As you already know, the proposed closed session this morning had been--
23 -has already been canceled, but in the Consent Calendar, agenda Item 2G has been
24 deferred, and that's the resolution regarding the creation of a Health Impact Assessment
25 working group. We did receive two petitions this week, both relating to the disclaimer for
26 Pregnancy Resource Center--one petition supported, and one petition opposed. Thank
27 you.

28
29 COUNCIL PRESIDENT ANDREWS:

30 Thank you. OK. Our next item is action on approval of the minutes of November 10 and
31 12, 2009. Is there a motion?

32
33 COUNCIL VICE PRESIDENT BERLINER:

34 So moved.

35
36 COUNCIL PRESIDENT ANDREWS:

37 Moved by Council Vice President Berliner. Seconded by...

38
39 COUNCILMEMBER LEVENTHAL:

40 Second.

41
42 COUNCIL PRESIDENT ANDREWS:



November 24, 2009

1 Councilmember Leventhal. Any comments? Seeing none, all those in favor of the minutes
2 of November 10 and 12, for approval, please raise your hand. And that's unanimous, 9-0.
3 We'll now move on to the Consent Calendar. Moved by Councilmember Knapp.

4
5 COUNCIL VICE PRESIDENT BERLINER:
6 Second.

7
8 COUNCIL PRESIDENT ANDREWS:

9 Seconded by Council Vice President Berliner. I'm going to make a comment on Public
10 Safety Committee report --Item E, the Public Safety Committee report and
11 recommendation on the Office of Legislative Oversight report 2010-3, Evaluation of
12 Montgomery County's Safe Speed Program. I want to acknowledge, as has always been
13 the case, the great work done by our Office of Legislative Oversight in analyzing policy
14 issues, and the Public Safety Committee made a number of recommendations as a result
15 of the findings of the report. Let me first emphasize that the key finding in the report, in my
16 view, is the reduction in collisions that has occurred on streets with speed cameras
17 compared to the year before, when there were no speed cameras. Speed cameras have
18 resulted in a substantial reduction in collisions--they're down 28% --and collisions that
19 involved an injury or fatality were down 39% on those streets. I think that is very clear
20 evidence that speed cameras are working to make our streets safer and that they have
21 been an important public safety tool for the County to address the very serious problem of
22 speeding in residential neighborhoods and near school zones. So I want to also commend
23 the Montgomery County police department for implementing the program in a--in a very
24 effective and thoughtful way, and we've heard several times from representatives of the
25 police department about how they went about this. It was very deliberate, well planned,
26 and responsive to the community. So my hat's off to all of the Montgomery County police
27 officers who have been involved in implementing the speed camera program that is
28 currently headed by Captain Damskey. The recommendations are that the Public Safety
29 Committee recommends the Council employ its oversight role to ensure continued public
30 outreach and involvement in the speed camera program, that the Public Safety Committee
31 recommends the Council require that information on the Safe Speed Program
32 expenditures, revenues, and the use of net revenues appear on the Safe Speed web site
33 and in future annual budget documents, that the Council ask the Executive to negotiate
34 Memoranda of Understanding that require that either municipalities process their own
35 speed camera fines, fees, and penalties, or the County recovers the full cost for doing so.
36 Municipalities have indicated that they do plan to process their own, and that's good news.
37 The Public Safety Committee also is asking the Executive branch to return in January to
38 discuss operational and public outreach issues resulting from the new state restrictions on
39 school zone speed camera operating hours. And the Public Safety Committee has asked
40 the Executive branch to return in January to present information about how the restricted
41 hours of operation in school zones have affected vehicle speeds and the rate of collisions.
42 In addition, the Public Safety Committee has asked the Executive branch to return in

November 24, 2009



1 January to present revised FY10 Safe Speed revenue projections and has directed OLO
2 to prepare a memorandum report that summarizes the major findings of the report for
3 submission to the General Assembly, and a draft copy of the memorandum report
4 appears on circles 9-13. As my colleagues will recall, the County Council was required
5 under the law adopted by the General Assembly to authorize speed cameras in
6 Montgomery County--we were the first County to be authorized to have them--to report
7 back by the end of this year on the results of the program, so that's what we are going to
8 do. And that is a summary of the Public Safety Committee report and recommendations
9 that is included in the Consent Calendar, but I wanted to draw attention to it because I
10 think the Safe Speed Program has achieved a very important public purpose, and that's
11 due to the very effective work of our police department and to our residents responding to
12 the presence of cameras and slowing down and driving safer, and the proof is in the
13 reduction of collisions. So that's my comment on that, and I'll turn to Councilmember
14 Trachtenberg, then Council Vice President Berliner and Councilmember Knapp.

15
16 COUNCILMEMBER TRACHTENBERG:

17 Thank you, President Andrews. I actually wanted to pull out item number D, which is the
18 end-year report to the full Council from the Audit Committee. I think it's important to
19 acknowledge the work of the committee and all 5 of my colleagues. We met 5 times
20 during this calendar year. In the month of March, we talked with the inspector general
21 about the potential operation of the committee, as well as with the chief administrative
22 officer. We also talked with Mr. Dagley about the structure of his office, and we went over
23 some of the risk-assessment issues specific to County government finances. In April, we
24 talked about the external audits of the County government's financial statements, and
25 were joined by our audit firm, Clifton Gunderson, and also Rager, Lehman & Houck. In
26 September of this year, we had a conversation that was specific to contract management.
27 Again, we were joined by the chief administrative officer and the director of the
28 Department of Health and Human Services, and specifically the work was focused on
29 contract administration and fiscal monitoring--a very important conversation. In November
30 of this year, we talked again to the director of Department of Health and Human Services
31 about a new work group that had been formed around contract managing-- monitoring,
32 rather. We also talked with the inspector general again about his 4-year work plan. And
33 the last item that was addressed, back in early November, was a committee discussion of
34 Bill 40-09, Personnel - Audits - Trust Fund, and that bill is actually before you today for
35 consideration. We discussed it briefly this morning once again, making sure that it
36 reflected agreement amongst all parties. Specifically, there had been some interaction
37 between our staff and different unions to make sure that we had agreement on whatever
38 process would be utilized for that purpose. So, again, that's a summary of what we talked
39 about--a lot of work, and I imagine that we'll have our hands full the next calendar year,
40 since-- not only because we're in a difficult budget situation, but clearly we recognize that
41 there are continued improvements that will be made around a lot of government functions,
42 including the oversight of contracts.

November 24, 2009



1
2 COUNCIL PRESIDENT ANDREWS:

3 Thank you, Councilmember Trachtenberg. The--as you noted, the MFP Committee has
4 met as the Audit Committee 5 times this year now and took up the bill this morning on the
5 audits and recommended approval. That's actually on the agenda for next Tuesday at this
6 point.

7
8 COUNCILMEMBER TRACHTENBERG:

9 Oh, OK.

10
11 COUNCIL PRESIDENT ANDREWS:

12 Thank you, though, for the report. Council Vice President Berliner.

13
14 COUNCIL VICE PRESIDENT BERLINER:

15 Briefly, colleagues, Item F is action that we will take to accept the County Executive's
16 request that we extend until April the timeframe in which we will receive from the
17 Executive branch the regulations implementing the Home Energy Loan Program, a
18 program that this Council, I know, feels strongly about, as does the County Executive. The
19 legislation that we passed had called upon the County Executive to have regulations to us
20 by October 15, with the hope that we would be able to implement this program this winter
21 heating season. That's not going to happen. It is a very complicated program, and getting
22 the dollars lined up--quite frankly, we haven't gotten the dollars from the Department of
23 Energy yet that we fully expect to get, but we haven't gotten them today. So it is
24 something that we still need to work our way through. We're having good conversations
25 with the Maryland Clean Energy Center, who wants to partner with us with respect to this,
26 but all of these conversations, as well as the details of this program, require a little more
27 time than had been anticipated. So now they have asked for April 15, and if we're not
28 going to have it by this winter heating season, then it seems appropriate to give them
29 sufficient time to get this program right, because we do want to get it right. Thank you.

30
31 COUNCIL PRESIDENT ANDREWS:

32 Thank you, Council Vice President Berliner. And Councilmember Knapp.

33
34 COUNCILMEMBER KNAPP:

35 Thank you, Mr. President. I just want to speak on Item C in the Consent Calendar--the
36 resolution regarding Montgomery County Public Schools' state funding request for school
37 construction. We submit a letter each year-- the Council President and County Executive--
38 with our request. This year, we are requesting-- or we're eligible for approximately \$139
39 million in state aid for school construction funding. As has typically been our practice, we
40 expect to get much less than what we're eligible for, and so we usually put about \$40
41 million in as a placeholder, in hopes that we get near that number. So--again, so we're
42 eligible for 139. We're going to put in 40 as the placeholder, and we hope we get to the

November 24, 2009



1 40. In the course of conversation, though, yesterday was even more interesting because it
2 is likely that this year Montgomery County as a school system, with the commitment to
3 education that we've made, will spend more money in capital school construction costs
4 than the state of Maryland will spend for the entire state. Again, Montgomery County, as
5 one jurisdiction, will spend more money for school construction than the state of Maryland
6 will spend for the entire state. I just think it's important for us to understand that. It's an
7 important message for us to continue to put out there. There are those who will say, "See?
8 That's just Montgomery County being flush again." The reality is we've made a
9 commitment to funding education, we've made a commitment to funding the facilities for
10 our students to learn in, and at some point we're hopeful that we can get our state
11 colleagues to join us in that level of commitment. But I think it's important for us to
12 understand those numbers as we go into a challenging year. I think we all recognize that,
13 but in spite of that, we're still going to make sure that we have made--fulfilled our
14 commitment to our students and to our economy to make sure our educational system is
15 as strong as it can possibly be. So I just wanted to put those numbers out there because I
16 think it's important for us to keep that in mind as we proceed forward.

17
18 COUNCIL PRESIDENT ANDREWS:

19 Thank you, Councilmember Knapp. Councilmember Ervin.

20
21 COUNCILMEMBER ERVIN:

22 To follow up on that point, in the discussion yesterday in the Ed Committee, we also
23 talked about the circular argument that goes on in the state every year, and that is, "Well,
24 there goes Montgomery County again, spending--outspending what most other
25 jurisdictions in the rest of the state do." So I just think that--I understand Councilmember
26 Knapp's point of view on this, but I also want to say that if Montgomery County continues
27 to forward-fund these projects and then go back to the state afterwards to ask for
28 reimbursement, we will continue down this road of always playing the game that somehow
29 we're going to get what we believe is our--what is supposed to come to us. And so we're
30 in the tight budget year that we're in. We can continue to go down this road and forward-
31 fund all these projects and then have the County on the hook for them, or we can maybe
32 reevaluate our strategy in terms of how we deal with the--with the rest of the state on how
33 we fund our projects. So I just wanted to circle that back around. That's from my point of
34 view.

35
36 COUNCIL PRESIDENT ANDREWS:

37 Thank you, Councilmember Ervin, our chair of the Education Committee. All right. There
38 are no more comments on the Consent Calendar, so we're ready to vote on the Consent
39 Calendar. All those in favor, please raise your hand. That is unanimous, 9-0. The Consent
40 Calendar is approved. Our next item is a very important item, and it is action on
41 implementation of recommendations regarding the Office of Legislative Oversight report
42 2008-9, Hiring Persons with Disabilities:

November 24, 2009



1 A Review of County Government Practices. The Management and Fiscal Policy
2 Committee has recommendations regarding the issues, and I will turn to the chair of the
3 Management and Fiscal Policy Committee, Councilmember Trachtenberg, for the
4 committee's report, and I'm going to ask the chairman-- Chair Trachtenberg, I'm going to
5 ask the chair of the disabilities commission-- Montgomery County Commission on People
6 with Disabilities--to join us at the front. If the vice chair is present as well--Cindy
7 Buddington, are you vice chair? No? OK. All right. You used to be chair, right? Come on
8 up.

9
10 COUNCIL VICE PRESIDENT BERLINER:
11 She's Vice Chair Emeritus.

12
13 COUNCIL PRESIDENT ANDREWS:
14 Come on up. You're a former chair, a former chair. Come on up. And I will now turn to
15 Councilmember Trachtenberg for the recommendations of the committee on this very
16 important item.

17
18 COUNCILMEMBER TRACHTENBERG:
19 Thank you, President Andrews. And as I open my remarks--a brief summary of the
20 recommendations provided by the committee--I want to also acknowledge Mark and Cindy
21 for their commitment and their hard work over the years on this important issue, making
22 sure that those that have disabilities have opportunities for employment here in
23 Montgomery County. And additionally, I want to recognize the effort by both Leslie Rubin
24 on our staff, who has joined us, but also the hard work of the Office of the County
25 Attorney, the Office of Human Resources, the Department of Health and Human Services
26 over the years on this, as well. Yesterday, we were joined by Mr. Adler, who I know is in
27 the audience today, from OHR, Mr. Lattner from the Office of the County Attorney, as well
28 as Dr. Kenney from the Aging and Disability Services Program over at HHS. The
29 conversation within MFP on the excellent OLO report that was released last year has
30 been ongoing. I believe we've had two or 3 worksessions over the course of the last 9
31 months, and yesterday the committee made two recommendations, one specific to the
32 issue of empowering a special hiring authority. The recommendation of the committee
33 was to refer this Charter amendment issue to the Charter Review Commission. One thing
34 we talked about we didn't define in our recommendation was the possibility of actually
35 setting a date for a decision by the commission. We realized that unless there is some
36 recommendation forthcoming from the commission by July, August, there wouldn't be an
37 opportunity to add something to the ballot next November, so I would suggest to
38 colleagues that that might be something we want to talk about this morning on the dais.
39 But the recommendation of the committee was to refer to the commission for
40 consideration-- that we have support for the special hiring authority, and we would like to
41 have some input from the commission. The other recommendation from the committee
42 was to go forward with the County law establishing a hiring preference here in

November 24, 2009



1 Montgomery County. We think that that is an important step, an important first step, and
2 we would--we would ask the full body to consider that this morning. I don't know if either of
3 my colleagues want to add to my commentary. I would ask, though, that Dr. Maxin provide
4 some comments at this time, and either--and maybe Cindy, as well. Mark's comments
5 yesterday were both eloquent and persuasive, and I'd like to give you the opportunity this
6 morning, briefly, to make similar remarks.

7
8 **MARK MAXIN:**

9 Thank you, Duchy, and thank you, everybody. Today is a very, very special day. It reflects
10 that this Council has a vision and a willingness to try to promote the rights of individuals
11 with disabilities. I'd also like to thank the County Attorney because his legal analysis on
12 many of these issues are something that many other counties and other state
13 governments can't figure out, and he did a great job. I'd also like to thank Joe Adler for his
14 vision and his commitment, as well as Jay Kenney for all of his efforts. I'd like to start by
15 telling you what I think it means what you're about to vote on. First of all, we need these
16 initiatives--this hiring preference, this direct hire provision--because of a number of
17 reasons. Number one is that the poverty rate of people with disabilities in Montgomery
18 County is about 43%, and probably much higher. So the figures are quite outrageous.
19 Number two, the participation rate, as far as the actual number of people who are in the
20 government, both the federal government as well as in the County, is extremely--is
21 extremely low. 3, the unemployment rate is very, very high for individuals with disabilities,
22 as well. But there's something else that is underlying all these things, and they were
23 captured by a Supreme Court case called Arline, which I'm sure the County Attorney
24 knows. It stands for the proposition that the accumulated myths and fears associated with
25 a medical condition are sometimes greater than the actual limitations of the medical
26 condition itself. And for just a minute, I'd like you to look at my esteemed colleague Cindy,
27 and some people would look at Cindy and see her chair. I also look at her and see the
28 steel, but the steel I see is of her will and of her wisdom and of her leadership. I follow in
29 her footsteps. And she has been a great inspiration to me and many of the people on the
30 Council-- excuse me, on the commission. And the Council, too. Thank you. And I think
31 that really what is before us right now is to understand that people, when they see
32 somebody, might see the chair; they don't understand that the person who is blind can
33 have vision, that the person who is deaf can listen, that the person who is speechless can
34 have a voice. You know, the individual with the disability, like Cindy-- she has to address
35 not only the stair, but the stare. And we need to be conscious of the inherent
36 discrimination that these individuals face on a daily basis. Today is nothing but a brief
37 step, but an important one. What you are doing today is showing leadership, not only for
38 this County, not only for this state, but honestly, for this nation. Let me explain a little bit
39 about what you're about to accomplish. Direct hire--what's that all about? Well, as
40 somebody who uses direct hire in the federal government, it's a tremendous benefit
41 because most people have to apply for a job, and then they have to go write up their
42 application, and then they have to go through the interviews, and then they have to go,

November 24, 2009



1 you know, through this whole process, and ultimately compete against a number of
2 people. The direct hire provision allows somebody who is disabled --who, by the way, has
3 to be able to do the job--let's make that clear--to get that job and to basically just walk into
4 somebody's office, and if they have a position they're qualified for, certified by the, you
5 know, Human Resources office as, to be able to get that job if they have a significant
6 disability and certified through, you know, DORS. They don't have to go through that
7 whole merit staffing process. That's a benefit not only for the employee, but for the
8 manager. The manager, sometimes it can take forever to select someone through the
9 merit staffing process. You could probably have hearings on this. Today, what it means is
10 that somebody can--can--a manager can hire somebody more quickly. So that's the
11 benefit for the manager, as well. With regard to disability preference, it seems to me that
12 if--given the data that I have provided you today, that if somebody can make it into the
13 highly qualified list and is extraordinary--given the lack of hiring in this area-- we should
14 give them a preference. So what you're about to do today is critically important, and on
15 behalf of the chairman, I just want to say--and my fellow commissioners--I just want to say
16 that we wholly endorse Option 4, and I hope you vote for both of these. Thank you.

17
18 COUNCILMEMBER TRACHTENBERG:

19 I thank you for those remarks, Mark, and I wondered, Cindy, did you want to add anything
20 or not?

21
22 CINDY BUDDINGTON:

23 No. I think what he said is great.

24
25 COUNCILMEMBER TRACHTENBERG:

26 OK. We've said it all. So those are the recommendations of the committee. Yesterday's
27 conversation within MFP also briefly was focused on the issue around state
28 reimbursements and enhancing, in good times, our intern opportunities here within County
29 government, and we'd like to continue to work on both those opportunities for some
30 advocacy and for some reform, as well. But I'm very proud of the recommendations that
31 have been provided from MFP, and I would encourage my colleagues to support the
32 committee recommendation at this time.

33
34 COUNCIL PRESIDENT ANDREWS:

35 Thank you, Chair Trachtenberg. As you noted, there are really two recommendations that
36 the committee is bringing to the Council. One is regarding a--the process for a potential
37 Charter amendment that would establish a special hiring authority-- similar, likely, to the
38 federal government Schedule A, that was described by--very eloquently by the chair of the
39 commission. And the other is a hiring preference for people with disabilities who qualify for
40 the highest category for which candidates are being considered for the position. I had the
41 pleasure of attending the MFP Committee meeting yesterday for part of the discussion,
42 and I think it's a reasonable suggestion to send the idea of a Charter Commission

November 24, 2009



1 amendment to the Charter Commission for its review and recommendation. I would
2 suggest that we should give a deadline of June 30 or July 1 in order to assure that the
3 Council would have time to take action after the recommendation in order to put it on the
4 ballot for this coming--for next November. So--and there seemed to be agreement at the
5 committee session about that approach, so that's a comment there. And--

6
7 COUNCILMEMBER TRACHTENBERG:
8 Did you want to make a motion?

9
10 COUNCIL PRESIDENT ANDREWS:
11 All right. I'll make a motion to make that part of--officially part-- there was informal
12 agreement, I think.

13
14 COUNCILMEMBER TRACHTENBERG:
15 Right.

16
17 COUNCIL PRESIDENT ANDREWS:
18 OK. So we would establish a deadline of July 1 for the Charter Review Commission to
19 report back on its recommendations regarding a Charter amendment to establish a
20 special hiring authority for people with disabilities-- July 1 of next year. And that would
21 give the Council time to take it up before our deadline for putting a measure on the ballot,
22 and so--and the Council has the option, always, to put measures on the ballot, but we do
23 value the work of the Charter Review Commission, and I think it's very appropriate to ask
24 them to give us their thoughts on this, and I think 7 months should be plenty of time to
25 give them to do that. And so that--I'm pleased that the Council supports that. And so that
26 is the first--and I sense support for that recommendation. Doesn't seem like there are any
27 comments on that particular part of it. And then the second recommendation was to
28 establish a--in effect, to get the process going on instituting, developing a hiring
29 preference for people with disabilities who qualify for the position at the, you know, the
30 highest rating that is for the position that candidates are being considered for. And I'll see
31 if there are any comments on that, but I agree very much with the comments made by the
32 chair of the commission about how important it is for the County to do what it can and to
33 take all feasible steps to increase the opportunities for people with disabilities to work for
34 our County and serve the people in Montgomery County. The underemployment and
35 unemployment rate among people with disabilities is generally considered to be over 70%.
36 It's a staggering waste of human talent, and our Commission on People with Disabilities
37 has highlighted the need for the County to strengthen its policies in this area. The Council
38 has discussed this issue in--a lot of good attention to it in the past few months and over
39 the past year, and our Office of Legislative Oversight did a very thorough analysis of--of
40 the challenges that people with disabilities face in employment and what the County can
41 do to assist and become a best-practice employer with regard to hiring people with
42 disabilities. And so I'm very, very pleased to see the recommendations from the



November 24, 2009

1 Management and Fiscal Policy Committee, and I thank all the members of the committee
2 for their work on this, and I'll turn to my colleagues to see if there are comments before
3 we, you know, take final action on this. So, Councilmember Leventhal, and then
4 Councilmember Ervin.

5
6 COUNCILMEMBER LEVENTHAL:

7 Well, I appreciate the Council President's suggestion, and I think it's a good resolution to
8 the issue. I'm just trying to clarify-- with respect to an alternative hiring mechanism, vis-a-
9 vis a hiring preference, which is it that the Charter amendment is required to affect? That's
10 the special hiring-- the hiring mechanism that bypasses the merit system? Is that correct?

11
12 | LESLIE RUBIN:

13 Correct.

Deleted: ?????

14
15 COUNCILMEMBER LEVENTHAL:

16 So that's what the Charter amendment would bring about.

17
18 | LESLIE RUBIN:

19 Correct. The hiring--

Deleted: ?????

20
21 COUNCILMEMBER LEVENTHAL:

22 But the hiring preference we could do by law as soon as we were able to get a bill drafted
23 and enacted?

24
25 | LESLIE RUBIN:

26 Yes.

Deleted: ?????

27
28 COUNCILMEMBER LEVENTHAL:

29 OK. I just wanted to clarify that. Earlier this year, my colleagues will remember, I
30 introduced legislation that would have reduced the number of boards and commissions in
31 the County from 83 to 72. The Commission on--and the Council had zero interest in taking
32 any action whatsoever on that legislation, and nothing happened. I mean, we clarified
33 some language, but we didn't eliminate any boards and commissions. I still think we have
34 some boards and commissions in the County that have some redundancy, but I never
35 proposed to do anything with the Commission on People with Disabilities, and I've been to
36 visit the Commission on People with Disabilities a number of times, have gotten excellent
37 suggestions from the commission that I have worked with my colleagues to effectuate,
38 and we've had--I think it has been one of the best commissions in terms of substantive
39 recommendations for policy initiatives that this Council has been able to act on, so look
40 forward to working with the new chair and continuing to work with the continuing
41 commissioners. We've been in close contact. Similarly, I think the Charter Review
42 Commission performs a valuable role for us in reviewing legal precedents and questions

November 24, 2009



1 that we might not consider. So I think--so by--by sending this to the Charter Review
2 Commission, it in no way diminishes our interest in improving the track record of the
3 County in hiring people with disabilities and providing opportunities for employment for
4 people under those circumstances. But we do need to acknowledge that we have these
5 boards and commissions, and specifically the role of this one is to advise us on Charter
6 amendments like this one, so if we were to bypass them, that would not-- that would not
7 enable them to fulfill their function, and they do have an important function, so I'm
8 delighted to second and support the Council President's suggestion in that regard.

9
10 COUNCIL PRESIDENT ANDREWS:

11 OK. Thank you, Chair Leventhal. Councilmember Ervin.

12
13 COUNCILMEMBER ERVIN:

14 Thank you very much. I'd like to just take this opportunity to thank Council President
15 Andrews and Councilmember Trachtenberg for their leadership on this issue, but
16 essentially to the Office of Legislative Oversight, who brought us this extraordinary report.
17 And every now and then, the Council actually does do good work on behalf of the citizens
18 of Montgomery County, and today is going to be one of those days that a problem was
19 identified, a lot of people worked on it, we had a lot of back-and-forth conversations on the
20 best approaches, and I for one am very proud of what we're about to do here today. And
21 for Mr. Maxin, you are an extraordinary advocate. We never met except for a few minutes
22 ago this morning, and so hopefully we'll get a chance to get to know each other better. But
23 as someone who really came out of the tail end of the civil rights movement, I think that
24 this is one of those opportunities that a local jurisdiction can stand up on behalf of people
25 with disabilities in a way that's quite extraordinary, I think. So I'm very proud of what we're
26 about to do, and it's-- you know, thank you all for your advocacy.

27
28 MARK MAXIN:

29 Thank you.

30
31 COUNCIL PRESIDENT ANDREWS:

32 Thank you, Councilmember Ervin. Council Vice President Berliner.

33
34 COUNCIL VICE PRESIDENT BERLINER:

35 Mr. Chairman, your comments were quite eloquent, and we thank you for them. You gave
36 expression in ways in which I had never heard and was really very powerful and
37 evocative, and thank you for doing so.

38
39 MARK MAXIN:

40 Thank you.

41
42 COUNCIL VICE PRESIDENT BERLINER:

November 24, 2009



1 My colleagues know that for two summers, I had a person with disabilities as an intern,
2 and--Aaron Kaufman, who is just an extraordinary young man that I know you're familiar
3 with--and I will say to you, it does present challenges, and it's important for us to
4 recognize it does present challenges. Simply finding a good space for him and having a
5 place for him to get to with his wheelchair in our office was very difficult. Making sure that
6 when we had a fire drill--that, oh, my goodness, somebody making sure that Aaron is
7 taken care of. And through it all, the consciousness that I think we all gained by his just
8 being with us was so valuable in the way in which you gave expression to--just knowing
9 that we are one, he is us, and we can't have this kind of division between. So my hope is
10 that my colleagues and I will continue our own efforts--that this isn't really just about the
11 Executive branch, that we have our own affirmative obligation to reach out and to ensure
12 that we're doing all we can do for our disabled community to have them be part of us and
13 teach us all the things that they have to teach us. Thank you.

14
15 MARK MAXIN:

16 Thank you.

17
18 COUNCIL PRESIDENT ANDREWS:

19 OK. And thank you very much for those eloquent comments, Vice President Berliner. So I
20 sense that there's no opposition to the recommendation to move forward with establishing
21 a hiring preference for people with disabilities that are qualifying for the highest category--
22 rating category that is being considered for the position. And with that assent, I'm going to
23 ask our Council staff to-- our Council lawyers to draft legislation that would get the ball
24 rolling, and most likely require that the Executive branch develop regulations to implement
25 a hiring preference. So my hope is that we can have that legislation ready for introduction
26 next Tuesday to get the ball moving, and I very much appreciate the hard work that has
27 been done by all the people that have been mentioned by many already:
28 the Office of Legislative Oversight; the Commission on People with Disabilities, which is
29 definitely one of our hardest-working and best commissions; our Council staff who have
30 worked on this issue; the committee, which met I think 5--5 times on this, 6 times on this,
31 to really go through these recommendations carefully. And there are some other
32 recommendations I should acknowledge that are in the letter from the Commission on
33 People with Disabilities that we should not ignore and that we will work on, as well, as well
34 as doing our part here at the County Council to--to set an example. So with that, I want to
35 note that this is a milestone in the County's efforts to provide better opportunities for
36 people with disabilities, and I look forward to working with all my colleagues in the coming
37 months to--to implement these-- these recommendations that the Council is adopting
38 today. Thank you all, and with that, I think we can move on to our vote. We'll have a vote
39 on acceptance of the recommendations. All those in favor, please raise your hands. And
40 that is unanimous. Thank you.

41
42 MARK MAXIN:

November 24, 2009



1 Thank you so much.

2

3 COUNCIL PRESIDENT ANDREWS:

4 And good to see you all. Have a happy Thanksgiving.

5

6 CINDY BUDDINGTON:

7 Happy Thanksgiving.

8

9 COUNCIL PRESIDENT ANDREWS:

10 We're going to move on to our final item for the morning, and that is an update on the
11 County income tax revenue situation. We--we got some very bad news last week about
12 income tax revenues for the November installment. We heard that they are down 85
13 million from what they were expected to be, a decline of 28% from the estimated amount -
14 -obviously, a huge number, and one that we need to figure out how to address as a
15 County as we go forward. So I'm going to first turn to Council Staff Director Steve Farber,
16 who is our resident fiscal expert over here, to make any opening comments he'd like to
17 make, and I'll turn to our Executive branch representatives--Jennifer Barrett, director of
18 finance, and David Platt, our economist --County economist. Mr. Farber.

19

20 STEPHEN FARBER:

21 Thank you, Mr. Andrews. As you know, a week from today, December 1, we're going to
22 have a complete fiscal update. The last Council update was on September 29. You
23 requested, however, that we have this discussion today about the latest income tax
24 distribution and its implications for the balance of this fiscal year and next because, as you
25 noted, the distribution was so much lower than expected. It was expected to be about 305
26 million. It turned out to be about 220 million--\$85 million less-- and there are implications for
27 this year and for next year that make our budget challenges all the greater. We are going
28 to have the full discussion of the fiscal update next week, but Finance Director Jennifer
29 Barrett is here, along with Chief Economist David Platt. Joe Beach, director of OMB, has
30 also joined us, and Alex Espinosa, director--the operating budget coordinator-- is also with
31 us today. So with that, Miss Barrett?

32

33 COUNCIL PRESIDENT ANDREWS:

34 Thank you, Mr. Farber. Good to see you, Miss Barrett.

35

36 JENNIFER BARRETT:

37 Good to see you.

38

39 COUNCIL VICE PRESIDENT BERLINER:

40 Being sarcastic?

41

42 JENNIFER BARRETT:

November 24, 2009



1 I understand. We're happy to provide this information. I will precede it by saying that the
2 November distribution is very important to us. We've been saying that to the Council for
3 some time, because it is the largest distribution that we get of the income tax, which, as
4 we all know, is collected by the state and then distributed out to the counties. It is the
5 primary distribution of receipts from October 15 filings related to tax year 2008. It is also
6 the--includes the third quarter withholdings and estimated payments from tax year 2009.
7 The fact is that when we get income tax distributions, they sometimes cover 3 tax years.
8 It's a very complex timing adjustments of when we get information, and so while we're
9 going to focus today on this November distribution, it is something that needs to be-- it's
10 only one distribution. We're looking over that information in the context of the overall tax
11 picture, and that's what we will be bringing to you next week with the overall revenue
12 update. I'll note that I just this morning received the information from the state confirming
13 the distribution amounts that we receive, so it is public information now to all the counties.
14 I will tell you that we are not alone, that we had severe, across--almost across-the- board
15 reductions for all the counties in Maryland, so we'll be hearing things from the challenges
16 that everyone in the state is facing. I think there is only one small county with an increase
17 in this distribution and a couple of jurisdictions where the adjustment that the state made
18 didn't even cover the full adjustment the state needs to make to their distributions. What's
19 going on is that the November distribution, in terms of those October 15 filings, except for
20 some additional filings we'll get in January, but they're a very small portion--it's a time of
21 truing up tax year 2008 in terms of the overall income of the state and the income tax
22 receipts of the state. In that way, the state now has that information about tax year 2008.
23 Before now, they've only had the information--the full information about tax year 2007, and
24 a large portion of our distributions-- withholdings and estimated payments--have been
25 made based on that 2007 information. So the two-part impact of this November
26 distribution is this truing up of 2008 in terms of the October 15 filings, but they go back
27 and make the adjustment related to the overall tax year of 2008. But the other impact is
28 that they now take this new information about 2008 and apply it to our withholdings and
29 estimated payments immediately--no delay. So there was also a reduction in our third
30 quarter distribution for the current tax year. And in times when--as in the past, when we've
31 experienced very large revenue growth-- and next week, we'll show you some charts
32 showing some of the trends over the years so you can put it in context--you know, we get
33 more money. The adjustment is an upward adjustment. This time, it was a downward
34 adjustment. So just to get into a little bit of specifics about this distribution. AS we
35 mentioned, the first part, the October 15 filings and adjustments, we had anticipated this
36 trend. We had anticipated the adjustment and had included in the estimated number for
37 this portion of the distribution a 60.5% decrease. What we got, though, was a 93%
38 decrease. So we had tried to take into account--and I think that others are going to be in
39 the same situation, where we tried to make the assessment accurately, but it was just far
40 more than anybody expected. As I said, we're seeing it across the board, across the state,
41 for all the jurisdictions. So that reduction from what we expected was 48 million, 48.1. In
42 terms of the withholdings and estimated payments, because they made this adjustment

November 24, 2009



1 related on 2008 versus prior, they had been distributed based on 2007, we had
2 anticipated pretty much a flat adjustment from actual '09 to the estimated FY10, and in
3 fact, they took \$30 million out of it --a 13% reduction to that piece of the distribution. That
4 was another 37.1 million. So the two dollar amounts--a \$48 million cut, a \$37 million cut --
5 that's where you get the \$85 million reduction in this distribution. Overall, the distribution is
6 down 43% from last year's distribution. Overall--what we do know, though, is our 2008 tax-
7 -the technical word is liability. The income tax receipts for 2008 are down 11% from tax
8 receipts for 2007. And that's the overall factor that's going to be affecting our revenue
9 projections going forward, and it's sobering, and it's--it's more than we had expected, quite
10 frankly. So that's what we'll be bringing back to you next week, is how this information we
11 learned from this distribution affects the overall revenue picture for income taxes. And it's
12 also the time of year when we do the overall November update of other revenue sources
13 that we do the projections on.

14
15 COUNCIL PRESIDENT ANDREWS:

16 OK. Does anybody want to add anything? No. OK. All right. Well, obviously, this is very --
17 you know, been very bad news, and it's a large reduction in what was expected. And the
18 Council is scheduled to have a full fiscal update next week, as you noted, and we'll learn
19 more about the other aspects of the fiscal picture at that time. But given the magnitude of
20 this shortfall, what is the--what does the Executive branch plan to do from this point in
21 responding to it and reacting to it and absorbing it or finding ways to reduce spending by
22 whatever amount the Executive branch thinks is necessary to avoid going unnecessarily
23 into reserves?

24
25 JENNIFER BARRETT:

26 It's early on, and I--we are working actively on the plan going forward, and I'll let Joe add
27 anything that we wants. I will say that from the finance director perspective, this 85 million-
28 -we were ahead just a little bit before now. I mean, that's--part of our conundrum is that
29 actually we were just a little bit ahead-- by about 10 million, I think, to date in income-tax
30 distribution--so we didn't have a real heads-up that this was going to happen in the
31 November distribution, past what we had already anticipated. My concern is that this 85
32 million at least is going to be a problem for the current year. And remember, we've
33 reduced reserves. We're at 5%, not 6%. A large portion of that--more than half of that--is
34 in the Revenue Stabilization Fund, so --and that's something that really should be a last
35 resort. So I can say that we are going to have to actively work to make some adjustments
36 in the current year, because reserves will not handle the overall picture that we're going to
37 see. And from a finance director perspective, I'm also very concerned about cash flow. I've
38 got to tell you that having lower reserves is-- there is--there are other impacts in terms of
39 just keeping the money moving, because there's a lot of timing differences between the
40 appropriation years and when cash actually goes out the door. So we've got some serious
41 challenges for the current fiscal year, and obviously that 11% reduction from '07 to '08 tax

November 24, 2009



1 years has implications for future income tax revenues for the County, because we're not
2 seeing a V-shaped recovery, as you all know well.

3
4 COUNCIL PRESIDENT ANDREWS:
5 Mr. Beach?

6
7 JOE BEACH:

8 Yeah. I don't-- at this point, don't have a lot to add, but we're just looking at a lot of
9 different options. We're working with our department heads right now, sort of giving them
10 the same kind of briefing that we're giving you now and getting their ideas, as well as
11 developing some other options. So needless to say, we'll be back to the Council with more
12 details later. I'm sure not next week a complete plan, but in the near future.

13
14 COUNCIL PRESIDENT ANDREWS:

15 Of course, the sooner the better, because there's more opportunity to save money the
16 longer in the year there is to implement the savings. So we--we would expect to, you
17 know, see some recommendations in the near future, and the sooner the better. What do--
18 -what would be-- what do we expect the impact of these reductions to be on the FY11
19 budget in terms of--what does it portend for income tax revenues?

20
21 JENNIFER BARRETT:

22 Since we're talking about the income tax, we know that now for the rest of 2009, the state
23 will be making its distributions of withholdings and estimated payments based on that
24 lower allocation to Montgomery County that's 11% lower than 2007, based on the 2008
25 tax year. That will extend through our fourth-quarter distribution and our first- and second-
26 quarter distributions next year, so until they get full 2009 information--tax revenue
27 information--that will affect the third-quarter distribution next year. So we-- this isn't going
28 to be corrected anytime soon in terms of the income tax portion of our revenue stream.
29 And I will mention that-- we've already mentioned to Council, and it's no surprise, we still
30 haven't seen a rapid increase in inflation. Inflation is still at least flat, if not negative. So
31 remember, we talked about that that has an impact on property tax revenues under the
32 Charter limit for next year. So those are two places I can say, yes, it has serious impacts
33 going forward, and we'll bring you more information on that next week.

34
35 COUNCIL PRESIDENT ANDREWS:

36 Right. Prior to the Savings Plan being adopted, the gap was projected to be about 365
37 million, and then the Savings Plan knocks 30 million off that, presumably, taking it down to
38 about 335, but as you just noted, the current estimate for property taxes at the Charter
39 limit for next year is based on an inflation rate of 3% or 4%. Inflation is essentially
40 nonexistent, which means that the--being at the Charter limit next year would mean 45
41 million less than is currently projected, which means that gap is now back up to about 380

November 24, 2009



1 before this impact. So that's, I think, a rough estimate of where we are at the moment, and
2 that may be a best-case estimate of where we are at the moment.

3
4 JENNIFER BARRETT:

5 And you add to that, this, and this happening again next year, at least. We'll be coming
6 back with more information next week.

7
8 COUNCIL PRESIDENT ANDREWS:

9 All right. I'll turn to my colleagues. Council Vice President Berliner, and then
10 Councilmember Floreen and Councilmember Elrich. And then Councilmember
11 Trachtenberg.

12
13 COUNCIL VICE PRESIDENT BERLINER:

14 Appreciate this heads-up. It obviously does not bode well for our County. We are clearly
15 talking about an additional Savings Plan, as I understand it. Is that fair characterization,
16 Mr. Beach?

17
18 JOE BEACH:

19 I think so, yes.

20
21 COUNCIL VICE PRESIDENT BERLINER:

22 And my understanding is that we are talking something in the order of as much as \$70
23 million in a potential Savings Plan?

24
25 JOE BEACH:

26 It would be an aggressive target, given the current year shortfall we're looking at. I'd like to
27 stay away from a specific number at this point, but it would be an aggressive target.

28
29 COUNCIL VICE PRESIDENT BERLINER:

30 It's bigger than a breadbox.

31
32 JOE BEACH:

33 It's very large.

34
35 COUNCIL VICE PRESIDENT BERLINER:

36 Mr. Farber, have we ever done anything--has the Council done a midyear Savings Plan of
37 that magnitude, in addition to the 30 we've done previously? This is truly extraordinary, is
38 it not?

39
40 STEPHEN FARBER:

November 24, 2009



1 Yes. We have, on occasion, done a second midyear Savings Plan when circumstances
2 have required it. I recall once or twice when that has happened in the past. But we've
3 never done anything of this magnitude.

4
5 COUNCIL VICE PRESIDENT BERLINER:

6 So this is going to be quite a challenge for you, it's going to be quite a challenge for us, to
7 find those kinds of savings midyear. Our options aren't--we don't have a lot of options
8 here.

9
10 JOE BEACH:

11 You're correct. It'll be a huge challenge, and as Mr. Andrews noted, the longer you go in
12 the fiscal year, the less discretion, less flexibility you have. A lot of commitments are made
13 in terms of hiring and contracting, and that's why we're meeting with our department
14 heads to make sure that they understand the urgency and the implications of this
15 information.

16
17 COUNCIL VICE PRESIDENT BERLINER:

18 Mr. Farber indicates that we're well over 500 million projected for FY 11 in terms of our
19 budget deficit. I'm of the view that seems to be on the low side. Can you give us your view
20 as to whether or not that 500 million is on the low side? Are we going to be up to 600
21 million?

22
23 JOE BEACH:

24 I'd like to save any specific numbers for next week's update so we have all the accurate
25 information, but it would be a very high target. I'd expect it may be even more than what
26 we were looking at this time last year.

27
28 COUNCIL VICE PRESIDENT BERLINER:

29 And that was how much, this time last year?

30
31 JOE BEACH:

32 About 515 million, I believe, was the gap last year.

33
34 COUNCIL VICE PRESIDENT BERLINER:

35 OK.

36
37 STEPHEN FARBER:

38 Yes. Mr. Berliner, what I've indicated is that these income-tax changes that Miss Barrett
39 has described alone bring us, I think, well over 500 million.

40
41 COUNCIL VICE PRESIDENT BERLINER:

42 Thank you.

November 24, 2009



STEPHEN FARBER:

That's before what Mr. Andrews talked about in terms of the Charter limit, where we'll lose another 45 million, and there are other factors that I identify in a footnote on the second page of my memo that could drive that still higher. So I would agree with you-- we're talking about a very large number.

COUNCIL VICE PRESIDENT BERLINER:

Clearly probably closer to 600 million than to 500 million before we're through with this. I think my colleagues and I and you--we have our work cut out for us here. This is--this is going to be very tough--tough year for all of us. Thank you.

COUNCIL PRESIDENT ANDREWS:

Thank you, Council Vice President Berliner. Councilmember Floreen.

COUNCILMEMBER FLOREEN:

Thank you. Mr. Farber and Miss Barrett, would you say that--that what this evidences is what we--sort of the reality check hitting local governments, the delayed reality that we end up experiencing with respect to tax revenue because we've been assuming our revenues based on 2007 numbers? Is that really what we're seeing here?

JENNIFER BARRETT:

We were making assumptions and projections here in Montgomery County based on more current information.

COUNCILMEMBER FLOREEN:

Sure.

JENNIFER BARRETT:

And that's why we had already anticipated some of this reduction--60% reduction--over last year. But the state--it's a factor of how they technically do their distributions. They don't try to make their own projections. They use actual 2007 data. And they noted that they thought we were over-distributed, but, like I said, we had factored that in. I would also say that Montgomery County is 30% of the state's income tax. So we specifically get hit extraordinarily, and the impact on us may also be tilted because of the higher income taxpayers. We don't have information on that yet. We obviously want to know more because of our--you know, the folks that are over 500,000. But that's also a piece of the impact here in Montgomery County.

COUNCILMEMBER FLOREEN:

So it's Montgomery County's contribution to the state--I mean, this is a statewide issue, obviously.

November 24, 2009



1
2 JENNIFER BARRETT:
3 It is a statewide issue.
4
5 COUNCILMEMBER FLOREEN:
6 But it's allocated--we contribute 30%, and they taketh away 30%, in effect--well, more than
7 that, under these numbers, right?
8
9 JENNIFER BARRETT:
10 Yeah. Remember, I'm talking about just the November distribution, where they took away
11 93% compared to last year.
12
13 COUNCILMEMBER FLOREEN:
14 Yeah. It's--
15
16 JENNIFER BARRETT:
17 But that's just one piece of the distribution, and it has that true-up for the year, so you
18 can't just take that number and extrapolate it. I'm sorry, but it's just one impact here.
19
20 COUNCILMEMBER FLOREEN:
21 Got that. So, are you able to distinguish, in the distribution numbers, the 2008 income
22 returns and the 2009-- the quarter numbers?
23
24 JENNIFER BARRETT:
25 Yeah. Those are the two pieces I talked-- I gave you specific numbers.
26
27 COUNCILMEMBER FLOREEN:
28 Those are--they're combined. Are you seeing different percentages in each category? I
29 mean, are you able to say, "Well, 2009, this quarter is X percent different from 2008, this
30 quarter"? Are you able to compare those?
31
32 JENNIFER BARRETT:
33 For some pieces of it.
34
35 COUNCILMEMBER FLOREEN:
36 So that's not easy to do.
37
38 JENNIFER BARRETT:
39 But others, because it hasn't--it's not a useful percentage change. It's the withholdings and
40 the estimated payments where that's kind of the stream. That's the piece that we can kind
41 of watch trends better than the other pieces which have to do with when people file,
42 extensions, et cetera.

November 24, 2009



1
2 COUNCILMEMBER FLOREEN:

3 Sure, sure.

4
5 JENNIFER BARRETT:

6 So the withholding and estimated payments was down 13% compared to last year.

7
8 COUNCILMEMBER FLOREEN:

9 OK. Well, we will obviously want a very--have a very thorough conversation of all this next
10 week. I very much appreciate the Council President putting this on today so we could ask
11 at least some--a few preliminary questions, and I suspect we'd like to work with the
12 Executive staff on a rather--I think we're going to need a pretty aggressive response to
13 this as soon as possible. So we will keep talking, won't we? OK. Thank you very much.

14
15 COUNCIL PRESIDENT ANDREWS:

16 Thank you, Councilmember Floreen. Councilmember Elrich, and then Councilmember
17 Trachtenberg, then Councilmember Navarro.

18
19 COUNCILMEMBER ELRICH:

20 So will we get details on what categories of income are vanishing, rather than just the
21 gross number? Will we actually get breakdowns by--by income group?

22
23 DAVID PLATT:

24 Are you talking about income class, Mr. Elrich?

25
26 COUNCILMEMBER ELRICH:

27 Yeah.

28
29 DAVID PLATT:

30 They'll give us a report--probably either the end of December or early January, they'll give
31 us a report for 2008, and they'll break it down by income category--the adjusted gross
32 income.

33
34 COUNCILMEMBER ELRICH:

35 And when you bring the--when we come next week and have the full discussion, I've
36 always been... I've always wondered which numbers to be following, because we tend to
37 come in with this projected budget based on projected expenses, and we all know we're
38 not going to do that, so--I mean, I just think we ought to focus on-- at least, I want to focus
39 on what's the difference between where you thought you were going, not the historical
40 trends, and what the gap looks like according to that. Because it's kind of--in previous
41 years of doing this, I've wondered, you know, which is the real number, and I think we just
42 ought to deal with what's the--not the historical basis, but what are you actually planning

November 24, 2009



1 for next year, and how short are we? And I guess I was wondering, what is--when we talk
2 about the rainy day money or, you know, the reserves, so what is the crisis that triggers--I
3 mean, this can't be like the state situation with Maintenance of Effort, where it was
4 described as if the state got hit by a tsunami and everything got swept away, they might
5 make a determination that we've reached, you know, some loss of a job base that can't be
6 quickly recovered. I mean, so what's the thinking about when, you know, their visit to
7 those funds are merited? I mean, there's a lot of talk about this being cyclical and a lot of
8 hand-wringing over making really, really drastic cuts for what's basically a cyclical
9 problem. And if people really think that the cycle comes to an end and has some
10 reasonable hope of recovery, it seems to me that portends one path you take regarding
11 reserves, or if you think that it's really going to be a lagging, miserable recovery for a long
12 period of time, then maybe that takes a different approach. But I'd kind of like to get a
13 sense of what the thinking is on when those funds get touched.

14
15 COUNCILMEMBER LEVENTHAL:

16 When is it a rainy day?

17
18 COUNCILMEMBER ELRICH:

19 Yeah. When does it rain?

20
21 COUNCILMEMBER LEVENTHAL:

22 I am looking out the window. It's--it's raining.

23
24 JENNIFER BARRETT:

25 It's rather complex, so if we could, we'll bring it back to you next week because it's X
26 number of months and this particular indicator, and there's 3 different indicators, and it's--
27 it's in law. But I will say that because when we talk about reserves here, we--the Council--
28 sorry, the County is using a combination, a policy that combines the rainy day fund with
29 the General Fund reserves; therefore, if you touch the rainy day fund, then we'll just
30 simply be in a position of having to make that up on the General Fund side to make--
31 reach our reserve level policy. So there--you can access the money. It's kind of a fund of
32 last resort, in my view, in terms of drawing from it, but even if you draw from it, you're
33 going to have to fill it up on the other side of the equation, which is the General Fund, to
34 reach whatever--our 6% fund balance policy, which we only hit 5% for the current budget
35 year.

36
37 COUNCILMEMBER ELRICH:

38 But, I mean, if the purpose of having those reserves is not just to have money sitting in the
39 bank, it's in order to enable us to do things or avoid things--

40
41 JENNIFER BARRETT:

November 24, 2009



1 Again, it also--the one other key aspect, it is for unfunded appropriations. It is for when we
2 don't have money--other monies in other funds to pay for things that we have
3 appropriations for.

4
5 COUNCILMEMBER ELRICH:

6 But isn't that the definition of our situation, when our money vanishes and we don't have
7 the money to pay for things that we --we're going to appropriate for?

8
9 JENNIFER BARRETT:

10 It is appropriate fiscal practice for us to everything we can to avoid that situation without
11 jumping--without drawing from the rainy day fund.

12
13 COUNCILMEMBER ELRICH:

14 I'm not suggesting that that's a place to jump to, but I think it's really important for us to
15 have some clarity about how this plays out in the cycle--that if you draw down, for
16 example, this year, and we don't replenish, what are the implications for next year? What
17 is the, you know--what is the real implication for cash flow, for example? Because I think
18 this is a time when, you know, we're going to have to make some really difficult decisions,
19 and I think we've got to understand the mechanics of this rather than, you don't what to do
20 that, or you don't want to go there. I mean, I want to understand why I don't want to go
21 there, and maybe understanding all of that will help us and everybody else who's looked
22 at it-- looking at this--understand that we do have real limitations on where we can move. I
23 mean, I do know that if you pull this down too low and you're expecting a repeat next year
24 of this year, there may be nowhere to go next year, and you don't want to be in the
25 situation where there's no place to go, but I'd like to at least get a sense of how this plays
26 out, to the best of your ability. And I do appreciate that-- that you all did anticipate a drop
27 in revenues, and certainly no one is going to accuse you of underestimating the revenues
28 this year. That's one argument we will not be listening to.

29
30 JENNIFER BARRETT:

31 Thank you.

32
33 STEPHEN FARBER:

34 On that point, Mr. Elrich, the rainy day fund, the Revenue Stabilization Fund, as Miss
35 Barrett said, is a very important foundation of our reserves. We've already taken the total
36 reserves of the rainy day fund plus the undesignated reserves down from 6% to 5%, and
37 as Miss Barrett said, the really--the key criterion is when appropriations become
38 unfunded. That's the key provision in the law. In 1992, we actually almost got there. We
39 didn't have a rainy day fund then. That started only in 1994. But at that time, we took our
40 reserves down to just about \$2 million, and we were really on fumes at that time, as folks
41 who were here then remember. We do have the rainy day fund now. It's very important
42 from the standpoint of our overall fiscal health. And yes, it is raining. It's more than

November 24, 2009



1 drizzling and it's more than a light rain, but the question is, is it really that devastating rain
2 that--that we guard against and the reason that we have a rainy day fund in the first place.

3
4 COUNCILMEMBER ELRICH:

5 I guess I suppose the definition will be when we see the cut list that accompanies this 85
6 million and then the cut list that accompanies next year's budget. Maybe we'll decide how
7 heavy it's raining. But, you know, what we haven't said anything about is this little elephant
8 in the room of the fine for the schools, because if--on top of making this unexpected
9 disastrous cut, if in fact the school system gets fined substantially and we can't go beyond
10 the cut we're making, and we're making that cut just to stay even, it has real serious
11 implications for the school system. I mean, it's almost like saying right now, we might
12 actually have to figure out if we wanted to maintain even the current level of funding at
13 schools. This isn't an \$85 million problem. This could be as much as a \$135 million
14 staring--problem starting at us right now. And that's--I mean, I just find that scary as a
15 midyear adjustment. And I think all of us feel that there's not a lot of fatback in the budget
16 that we can easily go after and say, you know, "Here are some simple programs you can
17 discontinue." I think we really are talking about a painful situation for everybody.

18
19 COUNCIL PRESIDENT ANDREWS:

20 Thank you, Councilmember Elrich. Councilmember Trachtenberg.

21
22 COUNCILMEMBER TRACHTENBERG:

23 Thank you, President Andrews. Well, this is an important conversation, and obviously, the
24 information that has been provided this morning is sobering, at best. And I would suggest
25 that it's certainly pouring, and I think a flood is about to occur. And what I'm referencing is
26 really the national conversation that's occurring right now about employment and the fact
27 that we're likely to see a second phase around unemployment figures, and that will even
28 put us, I think, in a more difficult spot--not just in terms of revenue but, quite frankly, in
29 terms of need. So my question, really, to you --all of you this morning-- is twofold. One is,
30 can we talk a little bit about some of those things that we are anticipating for next year?
31 Because while we can't say with certainty what is going to occur, there's certainly detail on
32 the footnote, the second one on page 2, about all the things that we face and the
33 implications of those factors on what we are charged with for the following year. And I'm
34 specifically referring to not only the Maintenance of Effort, but the state cuts, round 3, the
35 implications--we don't, again, know what the governor's budget is going to look like, but
36 we certainly know some of what's being talked about. And when you put all that together
37 with the write-downs on County revenues, you know, we are looking at a significant hole.
38 In the packet that was provided to us, it's defined as perhaps in the neighborhood of 500
39 million, but in my mind, I actually think that number actually might be larger than that. And
40 one of the things that I believe we're going to have to talk about eventually, and maybe in
41 the short term, is really priorities, because surely we're not going to have enough money
42 to do the things we want to do or even, frankly, that we have to do. And I've been asking

November 24, 2009



1 for that conversation, which I know is going to be painful, but I think it's really important to
2 have it in the short term, because I think that's the only way that we're going to get through
3 next year. And I would hope that as this Council continues to work with the Executive
4 branch and as the numbers become more evident, that we start having some of those
5 conversations, because I'm sure as this becomes more public knowledge, there will be
6 requests provided to us as legislators on what those priorities look like, because that's
7 directly related to the pot of money that is dwindling and how we are going to best invest it
8 on behalf of those that we serve and that we represent. So I would hope that after the
9 holiday break, one of the first things we're able to do is really set up a discussion around
10 priorities and how do we define them collectively. And perhaps we could do that through
11 MFP, but it would seem to me, given the gravity, the magnitude of the problem that we're
12 facing, that it's probably best to have that conversation before the full Council.

13
14 COUNCIL PRESIDENT ANDREWS:

15 Thank you, Chair Trachtenberg. And our final comment this morning will be
16 Councilmember Navarro.

17
18 COUNCILMEMBER NAVARRO:

19 Thank you. I guess really kind of piggybacks on what Councilmember Trachtenberg was
20 talking about in terms of setting priorities. Mr. Beach, you said that you have started
21 conversations with department heads about the gravity of the situation. So I was just
22 curious to know sort of what is the general sense there, what exactly-- what conversations
23 that you're having, and also, obviously, when we come back, if you could be a little more
24 specific about, you know, some of the things that the department heads are having to deal
25 with and what are some of the sort of general direction that you have provided them, so
26 that we can marry to hopefully a conversation around priorities and see how together we
27 can navigate this terrible time.

28
29 JOE BEACH:

30 OK.

31
32 COUNCILMEMBER NAVARRO:

33 I mean, any--

34
35 JOE BEACH:

36 At this point, I mean, it's very early. We have not--I mean, we're looking for ideas from
37 them. I can say based on our experience last year, we had great collaboration from our
38 department heads. I think they understood the gravity of the situation. We were able to
39 make some significant reductions of the budget without service reductions. But I think
40 what they're facing this year is a very constrained situation where they're carrying out
41 largely the same mission with less resources. That's a lot of strain on the staff right now,
42 and so, obviously, we can't speak in specifics now, but it would be hard to come up with

November 24, 2009



1 even a '10 or a--revised FY10 or FY11 budget that did not involve some significant service
2 reductions.

3
4 COUNCILMEMBER NAVARRO:

5 Thank you. And I guess when we do come back, I mean, I'm really always interested in
6 how do we address some of these issues in terms of same level of service, you know,
7 through collaboration and resource sharing and things of that nature, so however we're
8 able to capture that in some of these conversations. I think now more than ever, it's time
9 to really, you know, put our money where our mouth is in terms of collaboration to see
10 how we can continue to provide these type of services, especially when it comes to the
11 safety net, because that's the piece that keeps me awake at night--is that at the same time
12 that we're talking about these horrific times, we know that more than ever, people who
13 may not have--look toward local government for assistance. You know, they have to now.
14 And so, how do we kind of reconcile those two? So I look forward to that.

15
16 JOE BEACH:

17 That's an excellent point, because not only are they carrying out the same mission with
18 less staff, actually they have a greater mission, and there's a greater strain and demand
19 for services, as well.

20
21 COUNCIL PRESIDENT ANDREWS:

22 Thank you, Councilmember Navarro. And so what I--what I heard from the Executive
23 branch representatives was that we're likely to see a proposed Savings Plan that is
24 substantially larger than the one that we just approved two weeks ago, a week ago, and
25 the sooner we get that, the more impact it will have in terms of the amount of time it can
26 take effect. So as has been the case over the past few months, I know that we'll continue
27 to work closely with the Executive branch on ideas for that and-- so that we can respond
28 appropriately and in a timely way to this very bad news, to do what we need to to respond
29 to it, to find the additional cuts and savings, and to put in place for FY11 ideas that can
30 help us address what will clearly be a very large gap for FY11 that just got a lot larger. So
31 on that, thank you for coming over today, and next week, the Council is scheduled to have
32 a full briefing on the fiscal plan overall--fiscal outlook overall--which I'm sure will be at least
33 as sobering, and then--but in the meantime, I want to wish people who are here, who are
34 listening, a happy Thanksgiving. And we're going to recess and then come back--the
35 Council will come back for about half an hour at 1:30 for public hearings. We have 8
36 speakers and action on the final item. So I anticipate about half an hour this afternoon
37 before we adjourn around 2. So again, thank you all, and we'll see you back here at 1:30.



1 | **COUNCIL PRESIDENT ANDREWS:**

2 Good afternoon, everybody, and welcome to the afternoon session of the County Council.
 3 We have several public hearings, and then the last public hearing also has action
 4 afterwards. The first public hearing is on Bill 34-09, Forest Conservation - Enforcement,
 5 and combines actually -- is combined with 2 other items, Zoning Text Amendment 09-09
 6 and the Subdivision Regulation Amendment 09-03. Bill 34-09, Forest Conservation -
 7 Enforcement,
 8 would amend the forest conservation law to modify the number of required inspections
 9 and the notification period for inspections, specify the penalty procedures for violations of
 10 the forest conservation law, modify the hearing procedures for violations of the forest
 11 conservation law, and generally amend the forest conservation law. A T&E Committee
 12 worksession is tentatively scheduled for Monday, November 30, 2009, at 9:30, and I
 13 believe that's still planned. And then there's -- this is also a public hearing on Zoning Text
 14 Amendment 09-09, Planning Board Enforcement, that would revise provisions for
 15 violations, penalties, and enforcement of a Planning Board action and generally amend
 16 the provisions related to violations of the zoning ordinance. A PHED Committee
 17 worksession will be scheduled at a later date. And finally, this is also a public hearing on
 18 Subdivision Regulation Amendment 09-03, Enforcement - Amendments, that would revise
 19 the procedures to enforce a Planning Board action and generally amend the provisions for
 20 issuance, enforcement, and appeals of Planning Board actions. A PHED Committee
 21 worksession will be scheduled at a later date. Persons wishing to submit additional
 22 material for the Council's consideration on any of these items should do so before the
 23 close of business on Wednesday, November 25, 2009. Because we're combining these 3
 24 items, I will allow speakers to go over by a little bit if they need to to get their testimony in,
 25 over the normal 3 minutes -- but not by too much. So try to -- try to get it done in 3, but if
 26 you need a few extra seconds, you'll have it. The speakers for this public hearing are
 27 Royce Hanson, representing the Montgomery County Planning Board, Judy Koenick,
 28 speaking as an individual, Norman Knopf, speaking as an individual, and David Brown,
 29 speaking as an individual. If you have any written testimony, please give it to the clerk,
 30 and please remember to introduce yourself at the beginning of your testimony. Mr.
 31 Hanson, you're first.

32
 33 **ROYCE HANSON:**

34 Thank you, Mr. President. I'm Royce Hanson, chairman of the Montgomery County
 35 Planning Board. You have a longer statement on these 3 enforcement provisions. Bill 34-
 36 09, ZTA 09-09, and SRA 09-03 are a package of enforcement rules that provide the
 37 necessary support for effective enforcement programs to assure the public that project
 38 plans, preliminary plans, site plans, water quality plans, forest conservation plans, and all
 39 other Planning Board- approved plans will be implemented as intended in an efficient and
 40 consistent manner. It assures due process to alleged violators and maintains a level of
 41 transparency not necessarily available through District Court review by providing notice to
 42 the public of the hearings and an opportunity for interested parties to be heard before

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November 24, 2009

MONTGOMERY COUNTY COUNCIL

PRESENT

Councilmember Phil Andrews,
 President

Councilmember Roger
 Berliner . . . Councilmember Marc
 Elrich

Councilmember Valerie
 Ervin . . . Councilmember Nancy
 Floreen Councilmember Michael
 Knapp . . . Councilmember George
 Leventhal Councilmember Nancy
 Navarro . . . Councilmember Duchy
 Trachtenberg

-----Section Break (Next Page)-----

November 24, 2009



1 compliance requirements are instituted by the board. This legislative package also
2 addresses difficulties with and conflicts in current law that have limited the effectiveness of
3 the Planning Board's enforcement program. The changes to the law and the enforcement
4 rules are all interconnected and, if implemented together, will be the most effective means
5 of addressing previous difficulties with enforcement. SRA 09-03 would amend the
6 subdivision regulations. It allows the board to assess an administrative civil penalty at an
7 enforcement hearing in a fair and systematic way. It allows the Planning Board to decide
8 appeals of citations because the board has the authority to make all -- make decisions on
9 all aspects of a case at one sitting. Alleged violators can be heard in an informal
10 proceeding that saves both public and private resources and provides the public an
11 opportunity to be heard on any proposed compliance plan. Notices of violation are added
12 to give an alleged violator the opportunity to correct a violation before a civil fine is issued
13 or a hearing occurs. It allows the Planning Board to designate a hearing officer with
14 subpoena power, to hold a full adjudicatory hearing, and submit a recommendation to the
15 board based on the findings of fact and applications of the law. The board retains the
16 ultimate responsibility to make the final decision and determine whether an administrative
17 civil penalty, civil fine, compliance program, or other remedy is provided by law -- as
18 provided by law is appropriate. In all other public -- I'm sorry. ZTA 09-09 streamlines the
19 enforcement process by separating enforcement of the Planning Board actions from other
20 enforcement measures by the Department of Permitting Services. DPS would continue to
21 enforce zoning violations in the same manner as it does currently, but the Planning Board
22 would have original jurisdiction over the enforcement of approved project plans,
23 preliminary plans, site plans, and other plans previously approved by the board. Bill 34-09,
24 if I can just take a few more seconds, would amend Chapter 22A to ensure consistency in
25 the enforcement process for all Planning Board actions. The bill also clarifies some of the
26 ambiguities in the law and creates consistency between the law and administrative
27 process set forth in the forest conservation regulations that have already been reviewed
28 and approved by the County Council -- the process that is being followed today. In
29 closing, this comprehensive enforcement legislation is tailored to increase the efficiency
30 and effectiveness of the board's enforcement of those matters within its jurisdiction and to
31 ensure greater transparency to the public of the enforcement program. Over the past 5
32 years, the community has expressed concern about loopholes in the board's enforcement
33 processes. The legislation in the current enforcement provision strengthens the current
34 enforcement provisions, and it allows for public participation as plans are enforced and
35 considered for revision. We look forward to working with you in the achievement of this
36 important package of legislation.

37
38 COUNCIL PRESIDENT ANDREWS:

39 Thank you, Chairman Hanson. Our next speaker is Judy Koenick. There you go. There
40 you go. Move it toward you a little bit.

41
42 JUDY KOENICK:

November 24, 2009



1 I'm sorry. What?

2
3 COUNCIL PRESIDENT ANDREWS:

4 Just move the microphone right in front of you. There you go.

5
6 JUDY KOENICK:

7 Thank you. My name is Judy Koenick, and I'm testifying very quickly on all 3 of these.
8 Unfortunately, your system is somewhat primitive. It would have been a lot simpler if I
9 could simply have plugged in my Mac computer and do it that way, but you're PC blind,
10 and I can't do it. I have an able assistant over here, I hope is going to -- the basic thing is,
11 on the issue of forest conservation, if this applies to Park and Planning Commission, it
12 would be great, if they only did it and complied and enforced their own selves. I mean, I
13 find it difficult -- how are they going to bring themselves in and cite them? The same thing
14 with a development plan. I have the development plan for Meadowbrook Stables, as well
15 as the hearing that was held on December 6, 2001. There are major things that they say
16 that they're going to do. They haven't done 90% of it, and as a result, they are out of
17 compliance. In December -- excuse me, in 1990, they were told by Montgomery County to
18 stop polluting the air. They have never done it. So the issue to me is, how will this make
19 them do their job and enforce themselves and haul themselves in? They won't do it. I've
20 been trying for years. Allegedly, they might be doing something next month, but do I hold
21 my breath on it? Forget it. What I have here are some pictures to give you a brief idea,
22 one of which is -- Well, here. She's going to put these up here. What this area I've marked
23 shows you where the trees were at the stables before they came in and cut them down --
24 a large forested area. This next one shows you what it looks like now. Can you turn it the
25 other way so they can -- all right. All the way down from the bottom up past that rectangle
26 on the left there, the trees are all gone. What they did is, they came in in the flood plain --
27 keep in mind, this is the flood plain -- and cut down 75 mature trees. Then in their plan
28 here they claimed that storm water would be able to flow through it. Well, I don't know how
29 you can flow it through when you bring in hundreds of truckloads of fill and raise the area
30 a distance of several hundred feet in both directions -- filling in the flood plain. To give you
31 an idea what it looks like filled in, you'll see these 2 pictures -- next 2 pictures. You can
32 see the elevation there from the curb, the height, and what they've gone to raise it all up
33 there. This also shows you an extension of the height that they've done there. This will
34 show you that this is in the flood plain. In fact, the whole area is in the flood plain. Now
35 they've channeled the water because it cannot flow and spread out, as they claim in their
36 document that it will do that. In addition, they do not control what goes into the creek.
37 That's the mud sill and animal feces from the Meadowbrook Stables. That was taken this
38 year. It flows in regularly from there because they don't take it out, and they allow it to get
39 into the creek. I think the only reason they might be doing anything now at the point is
40 because the President has said we're going to do something about the bay. Otherwise, at
41 this point, for 20 years, I have seen them not give -- well, I have 2 little kids back there, so
42 I won't use the other word. In addition, they also said that their new sprinkler system would

November 24, 2009



1 control the dust. This clearly shows you that it doesn't. EPA and your own health
2 department has come in and said that this type of situation is dangerous, but nothing is
3 done about it. So basically, what I'm saying is, Park and Planning Commission has this
4 grandiose idea as to what they're going to do to everybody else. They don't do it to
5 themselves, and you all have an obligation to see that they do. Mrs. Floreen, trying to not
6 get too personal on this -- your past employment in there to me raises questions of
7 whether you can be objective on any of this, and your comment to me a couple of weeks
8 ago raised serious issues of whether or not you can be objective with anything involving
9 Park and Planning Commission, because when I tried to show you the issue of the dust,
10 you didn't see anything wrong with it. Thank you.

11
12 COUNCIL PRESIDENT ANDREWS:

13 Thank you.

14
15 JUDY KOENICK:

16 And if you guys want a copy of this, you could pull it up off of their website. It's 200 and
17 some pages.

18
19 COUNCIL PRESIDENT ANDREWS:

20 OK. Thank you, Miss Koenick. Our next speaker will be Norman Knopf, who I don't see,
21 and so I do see David Brown, and thus you're next.

22
23 DAVID BROWN:

24 Good afternoon, Mr. President and members of the board. I'm David Brown of the law firm
25 of Knopf & Brown, and I welcome the opportunity to speak in support of SRA 09-03 and
26 associate myself completely with the remarks by Chairman Hanson, as one who appears
27 with some regularity, representing clients before the Planning Board. My partner could not
28 be here this afternoon, but I know that he does not have any disagreement with my
29 remarks, although I am just -- I'm not speaking for the firm. I'm speaking for myself. I don't
30 have time to go through all of my testimony. I just want to highlight 2 points that I make in
31 the testimony regarding this bill. First of all, I think it is a very welcome shift to have the
32 site plan violation matters transferred from trials in the District Court to adjudications
33 before the Planning Board and Hearing Examiners. Our busy and able District Court
34 judges do not need to be burdened with delving into matters that call for the specialized
35 expertise and judgment of the board. I think it will serve everyone perfectly well if the
36 board's decisions in this area, like they are in almost every other development plan area,
37 are potentially subject to judicial review at the Circuit Court level, where they can be
38 looked at individually and in much greater detail than you could ever hope to get in a busy
39 District Court. The other point I would make is that complementary with this change --
40 which, by the way, is the way matters are handled under the Forest Conservation Act now
41 -- there will be another way in which this bill will be modeled under the Forest
42 Conservation Act. That act distinguishes between civil fines and penalties, and this bill

November 24, 2009



1 also distinguishes between civil fines and penalties. A civil fine is punishment for violating
2 the law, whereas a civil penalty is imposed not as punishment, but as remediation to
3 address the violation itself. It's not hard to imagine a circumstance in which that would --
4 that would be necessary. Imagine, for example, a developer builds a row of townhouses 2
5 feet closer to the street than allowed under the -- under the site plan. The houses are up.
6 It would be a huge economic waste to order those houses cut off in front and have to be
7 moved back and shortened. Better to use the factor in the bill which talks about looking at
8 the economic gain to the developer from --from committing the violation and imposing a
9 penalty that's based on that, especially if it turns out that the action is willful, if the facts
10 emerge that way. So we think that having this language in the bill itself will be a deterrent
11 to willful violations, and we may never have to get to the point where that will happen. It's
12 a welcome change. Thank you.

13
14 COUNCIL PRESIDENT ANDREWS:

15 Thank you, Mr. Brown. I have a couple of questions or comments. Councilmember
16 Floreen, and then Councilmember Knapp.

17
18 COUNCILMEMBER FLOREEN:

19 Thank you. Mr. Faden, are you handling this for the T&E Committee?

20
21 MICHAEL FADEN:

22 I'm handling the forest conservation bill, yes. Mr. Zyontz is handling the other 2 items.

23
24 COUNCILMEMBER FLOREEN:

25 The other 2. Could you all check in with the County Executive on this to see if there are
26 any comments? I'd like to make sure we knew if they had any observations if we're going
27 to take this up on Monday.

28
29 MICHAEL FADEN:

30 We do have a memo from the County Attorney's office which came in a little late for this
31 packet but we'll put it in the packet for next week which raises some technical legal issues.
32 We don't have any memo from the Executive branch on policy grounds.

33
34 COUNCILMEMBER FLOREEN:

35 OK. All right. Well, we'll deal with it then. Thanks.

36
37 COUNCIL PRESIDENT ANDREWS:

38 Thank you, Councilmember Floreen. Councilmember Knapp.

39
40 COUNCILMEMBER KNAPP:

41 Thank you, Mr. President. Just a couple of questions for when it comes to committee. One
42 is -- and I think for Park and Planning -- how -- the recommendation of a civil penalty in

November 24, 2009



1 excess of \$500 fine, how is that allowed, given the requirements under Article 28? And is
2 a payment required as a penalty different than a fine, and if so, how? And then... It's my
3 understanding, in Article 28, that there's is an element that says an individual who doesn't
4 pay can be taken to court. How does the new process by which the Planning Board is
5 recommending a step that goes before the Planning Board -- how does that work relative
6 to what we've got in current law now? So we don't need to -- when we get to the -- when
7 we get back to committee, we can go through all that, but those are some of the pieces to
8 address.

9
10 ROYCE HANSON:

11 OK. We'll be ready to address those.

12
13 COUNCIL PRESIDENT ANDREWS:

14 OK. Thank you, Chairman Knapp. Thank you, Chairman Floreen. And that concludes this
15 public hearing, so thank you all, and happy Thanksgiving.

16
17 JUDY KOENICK:

18 Thank you for taking the time to talk to Alex and David yesterday.

19
20 COUNCIL PRESIDENT ANDREWS:

21 Oh. Well, it's nice to see them again, and -- nice to see you guys.

22
23 JUDY KOENICK:

24 Figuring out how to get online, they're sitting there on my laptop playing computer games.

25
26 COUNCIL PRESIDENT ANDREWS:

27 They're visiting from Florida. Nice to -- glad you're here, and have a -- have a happy
28 Thanksgiving and a good trip back.

29
30 JUDY KOENICK:

31 In case you hadn't figured out...
32

Deleted: ?????¶

33 COUNCIL PRESIDENT ANDREWS:

34 Very close. OK. All right. Our next public hearing will be a public hearing on an
35 amendment to the Maryland-National Capital Park and Planning Commission's FY09-14
36 Capital Improvement Program for the South Germantown Recreational Park SoccerPlex
37 Facilities. A PHED Committee worksession is tentatively scheduled for Monday,
38 November 30, 2009, at 2:30 PM. That's the Planning, Housing, and Economic
39 Development Committee. Persons wishing to submit additional material for the Council's
40 consideration should do so before the close of business on Wednesday, November 25,
41 2009. We have 2 speakers signed up for this public hearing. They are Royce Hanson,
42 chairman of the Montgomery County Planning Board, and Robby Brewer, representing

November 24, 2009



1 Miracle League of Montgomery County, and if you have written testimony, please turn it in
2 to the clerk to my left, and please remember to introduce yourself at the beginning of your
3 testimony. Mr. Hanson, you're first.

4
5 ROYCE HANSON:

6 Thank you, and as before, I'm joined by our vice chair, Commissioner Wells-Harley. We're
7 requesting your approval for an amendment to the Capital Improvements Program for a
8 project entitled South Germantown Recreation Park: SoccerPlex Facilities to include
9 development of the first Miracle League fields in the state of Maryland. A miracle field is a
10 small baseball field specifically designed for physically and mentally challenged youth to
11 allow them to play baseball. The Department of Parks receives several unsolicited
12 proposals for public-private partnerships on park land every year. This one from the
13 Miracle League of Montgomery County immediately stood out, and the Planning Board
14 enthusiastically approved the partnership on July 20 of this year. The only challenge was
15 finding the right site for the venue, and the department has done so. The Miracle League
16 is a national, nonprofit organization that has supported development of 200 Miracle
17 League organizations across the country. Under the leadership of Dr. James Leder,
18 members of the Kiwanis Club of Bethesda formed the nonprofit Miracle League of
19 Montgomery County to develop fields in the County. The Miracle League complex at
20 South Germantown will include two lighted miracle fields, a plaza with concession area,
21 and parking with a drop-off area. The South Germantown Recreational Park: SoccerPlex
22 Facilities project, in the adopted CIP, authorized the development of a world-class soccer
23 complex, with multiple supporting and complementary recreational facilities. The Miracle
24 League fields are a perfect complement to this already-outstanding sports facility
25 designed to serve youth recreation needs. The site's adjacency to the Longview School at
26 Spark Matsunaga Elementary School, which serves children with disabilities, is also a
27 plus. The SoccerPlex Complex as approved includes funding to construct a community-
28 use baseball/softball field at the southwest quadrant of Schaeffer Road and Germantown
29 Park Drive. The requested scope adds the development of the Miracle League complex
30 as a public-private partnership at the same site, on Field C. No additional public funding is
31 requested beyond what is already appropriated for Field C. The Miracle League of
32 Montgomery County intends to fund development of the league's fields and supporting
33 infrastructure, as well as supporting funding for programming, operation, and maintenance
34 of the fields. The County Department of Recreation has expressed strong interest in
35 participating in this partnership related to the programming of the fields. And the Maryland
36 Soccer Foundation supports -- fully supports this use of the park. Park staff held a
37 community meeting at the SoccerPlex on June 18, where the project received broad
38 support. If this CIP amendment is approved, Parks will execute development and lease
39 agreements with the Miracle League of Montgomery County detailing the respective
40 parties' obligations for design, construction, maintenance, and operation of the complex,
41 and the board asks the Council's support of this CIP amendment to allow this very
42 worthwhile partnership to proceed. Thank you.

37

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November 24, 2009



1
2 COUNCIL PRESIDENT ANDREWS:

3 Thank you. Our next speaker will be Robby Brewer, representing Miracle League of
4 Montgomery County.

5
6 ROBBY BREWER:

7 Thank you, Mr. Andrews, and good afternoon, members of the Council. I'm Robby Brewer,
8 an attorney with Lerch, Early & Brewer in Bethesda. We represent, on a pro bono basis,
9 the Miracle League for Montgomery County, and pleased to be here before you today. As
10 Dr. Hanson indicated, the Miracle League of Montgomery County is a new nonprofit entity,
11 formed about a year ago by the Kiwanis Foundation of Bethesda that's affiliated with the
12 Kiwanis Club of Bethesda. The board members of Miracle League are also foundation
13 board members, including me, and our president, Jim Leder, Dr. Jim Leder, a dentist, is
14 here behind me. Jim, raise your hand. Jim has spearheaded most of the effort of this
15 matter so far. Our Kiwanis Foundation was formed in 1950 in Bethesda and for many
16 years has supported causes for disadvantaged youth in Montgomery County. That's its
17 focus. About 2 years ago, we received a bequest from an estate from longtime members
18 Sid and Roxy Hais. It was their request that approximately \$250,000, which was their
19 bequest, be used to support youth baseball in Montgomery County. We thought long and
20 hard about how we could do that, and this project will be their legacy. As Royce indicated,
21 nationally, Miracle League has developed about 200 fields -- some are still under
22 development -- where kids of all ages and disabilities are able to play baseball on a
23 protected surface in a safe environment. And we're pleased to have this public-private
24 partnership in Montgomery County to provide the first in the Washington Metropolitan area
25 and, for that matter, the first in Maryland. We're well underway. We've hired landscape
26 architect Grace Fielder and civil engineers to work on the design. We're about a third of
27 the way through the design. The Parks Department is busy reviewing it. Michael Ma of the
28 Parks Department, who is here today, has been our reviewer. If all goes well, we plan to
29 finish the design and the permitting process in the spring, and if we can raise about a
30 million dollars in construction and donated in-kind services and materials, we can then
31 begin construction in the spring and open up next fall. As Dr. Hanson indicated, at the
32 same time we build the Miracle League field, we will be building the Parks Department's
33 youth baseball field. That's the CIP amendment that's before you today. So we have this
34 public-private partnership and a joint development agreement where the public field gets
35 built with public money, and the private field, the Miracle League field, is built with our
36 resources. So we ask your support today in supporting the CIP amendment that has been
37 introduced, and we will have the PHED Committee worksession, I believe, this coming
38 Monday, and if there are any questions at that time or otherwise, we would be happy to
39 address them. Thank you very much.

40
41 COUNCIL PRESIDENT ANDREWS:

November 24, 2009



1 Thank you. Sounds like a very exciting proposal, very worthwhile. Council Vice President
2 Berliner.

3
4 COUNCIL VICE PRESIDENT BERLINER:

5 I don't have any questions with respect to this particular proposal. It does sound very
6 worthy, and I commend you for bringing it forward and for your good work with respect to
7 it. I do have a question on the broader question of public-private partnerships in our park
8 system, which, as you know, has raised some issues in my community with respect to the
9 Rockwood Manor possibilities. And the question that came to my mind was, the extent to
10 which you step back and say, gee, if this park isn't doing what we want it to do, why not
11 put out a Request for Proposals from everybody saying, what do you think we should do
12 to improve our service here? As I understand it, in this context, you have a proposal from
13 an entrepreneur who has ideas with respect to what should be done with this property,
14 and you're going to assess that and come back to us with your recommendations with
15 respect to it. But it felt to me to be a somewhat narrow conversation as to one particular
16 proposal, as opposed to stepping back and saying, if it's not achieving everything we think
17 it should achieve, what are we doing to solicit proposals for a range of ideas with respect
18 to it? So I'm curious as to your thoughts, Mr. Chairman, with respect to your process of
19 entertaining these kinds of concepts and whether my suggestion has any merit.

20
21 ROYCE HANSON:

22 Your suggestion has merit, and we do both. We do have a number of projects. In fact,
23 we've got some RFPs out now for some facilities that are either underused or unused at
24 this time and need, for their full opportunity to be achieved, probably some public-private
25 arrangement. We also have an open door for unsolicited proposals. In the case of
26 Rockwood, which you mentioned, this was an unsolicited proposal. When we have an
27 unsolicited proposal, it's first of all reviewed by the staff, and I have to say that we
28 received a good number of unsolicited proposals that do not even warrant bringing them
29 to the board to see if we feel like it's something that's worth pursuing. As in the case of
30 Rockwood, when we have a proposal that seems to have at least some merit, the idea
31 usually is to have the Parks Department pursue some public outreach and input to
32 determine whether or not there is a constituency for that idea, if it looks like it maybe is
33 financially viable, and to determine whether there would be public support, both for
34 whoever might be the constituency of that kind of a project and for the neighboring
35 communities that could be impacted by it, and that's what happened with Rockwood. So
36 there the effort was to reach out to the community to say, if this looked like it would be
37 viable and a good use of this facility, is it something that you, the neighboring
38 communities, would be comfortable with? And we expect to find that out as a result of
39 these kinds of conversations. Now, once the outreach is complete, the staff will come
40 back to the board with a recommendation, and we'll make a decision at that time as to
41 whether this is suitable thing, even if people want it. So there -- because there are some
42 things that might be suitable, might be financially desirable for a facility if we wanted to run

November 24, 2009



1 it as an enterprise, that still we might judge are not appropriate for park or for a particular
2 park.

3
4 COUNCIL VICE PRESIDENT BERLINER:

5 I guess it just seems to me that if you are going to entertain this concept -- which I'm not
6 passing judgment on one way or the other; I look forward to your own recommendations
7 and to the public comment with respect to it. I know it's a proposal that has engendered a
8 great deal of interest in my community, to put it mildly. But it seems to me that
9 simultaneously, you need to be asking yourself the question of, if this facility is not making
10 money, if it's an underutilized facility, if it is -- really, and it is a quite lovely facility -- what
11 are the range of options available to us, as opposed to looking at one particular proposal
12 and saying, is this suitable or isn't this suitable? So that's what I was striving to see, if that
13 --

14
15 ROYCE HANSON:

16 But -- and we -- we do that from time to time. We have solicited proposals for projects.
17 The most recent one was Circle Manor in Kensington, for which we solicited proposals,
18 and we really got none that were regarded as feasible, and in fact, I think we got none. In
19 other cases, we have solicited proposals, and we have received proposals that, on the
20 face, looked pretty good, but when more carefully examined, were proposals for the Parks
21 Department to essentially spend a great deal of money to make something happen. In --
22 but in any case, where the facility -- if we have not yet prepared an RFP and sent it out
23 and we still receive a unsolicited proposal, it seems like the prudent thing to do is to -- is to
24 go ahead and take a look at it. On the other hand, we may have a situation where we
25 have received an unsolicited proposal and we use that as an opportunity to think more
26 broadly and offer the opportunity for others to comment, as well. So the answer to your
27 question is yes and yes.

28
29 COUNCIL PRESIDENT ANDREWS:

30 All right. Thank you both. And that does conclude the public hearing and the action -- let's
31 see. And we will now move on to Item 6, which is a public hearing on Bill 36-09, Elected
32 Officials - Compensation. This bill would modify the compensation of the County
33 Executive, County Council, Sheriff, and the State's Attorney and generally amend the law
34 relating to compensation of elected officials. Action is tentatively scheduled for December
35 1, 2009. Persons wishing to submit additional material for the Council's consideration
36 should do so before the close of business on Wednesday, November, 25, 2009. We have
37 one speaker for the public hearing, Mr. Yale Wiesberg, the chair of the Compensation
38 Committee for Elected Officials. And so, Mr. Wiesberg, good afternoon, and we have your
39 written testimony, as well, so please remember to introduce yourself at the beginning of
40 your remarks.

41
42 YALE WIESBERG:

November 24, 2009



1 Yale Wiesberg. Again, I'm chair of the Compensation Committee to study the
2 compensation of the County Executive, County Council Sheriff, and State's Attorney.
3 President Andrews, members of the Council, the committee has studied the compensation
4 of the County Executive, County Council, Sheriff, and State's Attorney for the next term of
5 office, appreciated the opportunity to present our report to the Council on October 13. We
6 were pleased to see that on November 3, the Council introduced Bill 36-09, which would
7 implement the committee's recommendations. As you know, the committee concluded that
8 in this difficult economic and fiscal environment, increases in the salaries for the County
9 Executive and County Council in the next term of office need to be constrained. With
10 regard to benefits for elected officials, including group insurance and retirement, we
11 believe that these benefits should be consistent with those in place for other County
12 employees. This is already the case for group insurance benefits. For retirement benefits,
13 however, we note that 2 recent changes in the Defined Contribution Plan for several
14 thousand County employees, the Retirement Savings Plan, known as the RSP, have not
15 been extended to elected officials who participate in a similar plan. Effective July 1, 2008,
16 the County contribution to the employees' RSP accounts went from 6% to 8% of salary,
17 while the contribution for elected officials plan remained at 6%. The employee contribution
18 went from 3% to 4%. Effective July 1, 2009, County employees in the RSP were able, at
19 their option, to transfer their account balance to a new plan -- the Guaranteed Retirement
20 Income Plan, known as GRIP, which provides a 7.25% annual return, while participants in
21 the elected officials plan did not have this option. The committee believes that, in the
22 interest of consistency, these 2 changes in the retirement plan for County employees
23 should be extended to participants in the elected officials plan, starting in the next term of
24 office. We recommend that the Council amend Bill 36-09 to achieve this result. Please let
25 me know if we can provide any further information on this or any other matters affecting
26 the bill.

27
28 COUNCIL PRESIDENT ANDREWS:

29 Thank you, Mr. Wiesberg, and thank you for your service on the commission, which I
30 know you had done before, as well, and also to the other commissioners who served on it.
31 Appreciate the time that you put into it.

32
33 YALE WIESBERG:

34 Thank you.

35
36 COUNCIL PRESIDENT ANDREWS:

37 And there are no other questions or comments, so that concludes the public hearing.
38 Agenda Item 7 is a public hearing on Expedited Bill 39-09, Property Tax Credit -
39 Renewable Energy - Annual Aggregate Limit. This bill would amend the annual aggregate
40 limit for the property tax credit for solar and geothermal energy devices and energy
41 conservation devices and generally amend the law relating to the renewable energy
42 property tax credit. An MFP Committee worksession is tentatively is scheduled for

November 24, 2009



1 Monday, November 30, 2009, at 2:00. Persons wishing to submit additional material for
2 the Council's consideration should do so before the close of business on Wednesday,
3 November 25, 2009. We have one speaker signed up for this hearing and he is Stephen
4 Shaw, representing Rebuilding Together Montgomery County and the Montgomery
5 County Energy & Air Quality Advisory Committee, it looks like. So, Mr. Shaw, welcome.
6

7 STEPHEN SHAW:

8 My name is Stephen Shaw. Good afternoon. First, I thank the County Council for its
9 historically strong commitment to environmental issues and better use of energy. It has
10 really been wonderful. I'm a County resident involved as a volunteer in promoting energy
11 conservation, especially through home weatherization. In these comments, I speak for
12 myself, but my proposal has been shaped by several County groups. I serve on the
13 County's Energy & Air Quality Advisory Committee, I volunteer with Rebuilding Together,
14 helping low-income homeowners, and I'm involved with Bethesda Green. My comments
15 relate primarily to the energy conservation half of this program. Conservation -- energy
16 conservation -- is the single most effective strategy for green energy, and although
17 renewable energy is important, it is not as nearly as cost effective as conservation. The
18 amendment under consideration reduces the scope of the conservation program, and I
19 believe that's the wrong strategy. Instead, some simple steps could greatly increase the
20 effectiveness of the conservation program. It's a wonderful program, but it's underutilized
21 seriously. It could provide \$250 for each of a thousand homeowners each year, but its
22 utilization has been less than a fifth of that anticipated utilization. So what's wrong, and
23 how can we fix it? Well, first, people don't know about the credit, so let me give you a
24 surprising example. Last week, I talked to the general manager of a local Home Depot.
25 He, of all people, should know about the credit, but surprisingly -- shockingly, even -- he
26 didn't know about the credit. So I propose that a good way to promote awareness is
27 through local building suppliers. They can be a pivotal connection to the do-it-yourself
28 community. If we inform and motivate building supply vendors, they will inform and
29 educate their customers -- for example, as part of weatherization workshops. Second, the
30 process of filing for the credit is flawed. I know because I filed for one this year. The
31 information on the Web is limited. Phone is not answered. Emails are not returned. You
32 don't even get an acknowledgement when you submit a -- your application. So, this is
33 hardly the way to promote energy conservation. In short, we need to disseminate the
34 information and make the process for filing more user-friendly. In addition, 2 changes to
35 the legislation could make a big difference. The biggest impact would be simplification of
36 the process of reimbursement. It should be a mechanism that is simple and quick. For
37 example, how about a voucher program, perhaps handled through local building supply
38 vendors? Finally, I propose that Montgomery County partner with approved nonprofit
39 organizations to obtain and use energy conservation funds on behalf of homeowners. For
40 example, Rebuilding Together volunteers do weatherization as part of their assistance for
41 low-income homeowners. Often, volunteers are available, but money is not available for
42 supplies. So if that group could access the funds for a homeowner and promote

November 24, 2009



1 weatherization in their home, that would help get the process done. In conclusion, I
2 propose that conservation funds not be reduced from their current limit. Instead, I propose
3 that any unutilized funds for conservation in a given year be immediately released for
4 solar and geothermal applications. Thank you.

5
6 COUNCIL PRESIDENT ANDREWS:

7 Thank you, Mr. Shaw. Councilmember Floreen has a question or comment.

8
9 COUNCILMEMBER FLOREEN:

10 Mr. Shaw, I wanted to thank you. You identified some discrete problems and offered some
11 discrete solution, and that, I will tell you, in this world, is not all that common. So I just
12 wanted to thank you for this. I see Mr. Edwards sitting in the back there. We're going to
13 make sure that the Department of Environmental Protection is aware of these issues, and
14 we'll try to straighten them out and look at your suggestions. But that was very, very
15 helpful, so thank you.

16
17 STEPHEN SHAW:

18 Thank you. I've uncovered some excellence in the County, too. I must say that Eric
19 Coffman at DEP is outstanding, just extraordinary, and Alan Hepler at Housing -- the Low-
20 Income Weatherization Program -- has been outstanding, so I think there are sort of
21 wonderful pieces to work with, but the need is -- is enormous. And I think there has been
22 excellent leadership on the County in some of these areas. In particular, I think George
23 Leventhal and Roger Berliner have been extraordinary, and some of their staff.

24
25 COUNCILMEMBER FLOREEN:

26 They have, indeed. And -- but we thank you for those additional comments. We obviously
27 need to put you on a couple more committees.

28
29 STEPHEN SHAW:

30 There's an interesting movement evolving in Cambridge, Massachusetts, of a group called
31 Home Energy Efficiency Team, and they're volunteers who run barn raisings, as they call
32 them. And they get groups of volunteers working together, weatherizing each other's
33 homes and public buildings. And I went up there for one of them, and it's really an
34 extraordinary effort, so it's -- and they've now -- 15 or 16 in local communities around the
35 Boston area that are evolving. So with encouragement, there -- there is promise.

36
37 COUNCILMEMBER FLOREEN:

38 Thank you. Thank you.

39
40 COUNCIL PRESIDENT ANDREWS:

41 Thank you, Mr. Shaw. And that concludes this public hearing. So we're now on to Item 8,
42 which is a public hearing on Expedited Bill 44-09, Buildings - Energy Efficiency - Deferral.

November 24, 2009



1 This bill would defer the effective date for requiring that certain residential buildings meet
2 certain ENERGY STAR standards and generally amend the law relating to buildings,
3 energy, and environmental policy. Action is tentatively scheduled for December 1, 2009.
4 Persons wishing to submit additional material for the Council's consideration must do so
5 before the close of business on Wednesday November 25, 2009. And we have 2
6 speakers signed up for this public hearing -- Mr. Stan Edwards, representing the County
7 Executive, and Mr. Randy Melvin, representing the Maryland-National Capital Building
8 Industry Association. If either of you have written testimony, please give it to our clerk, and
9 please remember to introduce yourself at the beginning of your testimony. Mr. Edwards,
10 you're first.

11
12 STAN EDWARDS:

13 Thank you. Good afternoon. My name is Stan Edwards. I'm the chief of the Division of
14 Environmental Policy and Compliance in the Department of Environmental Protection.
15 Thank you for the opportunity to testify on behalf of the County Executive on Expedited
16 Bill 44-09 to defer implementation of the requirement that certain new homes meet
17 ENERGY STAR guidelines. As you are aware, Bill 30-07 required certain residential
18 buildings, for which a building permit application would be filed on or after January 1,
19 2010, to meet ENERGY STAR guidelines. That bill also asked DEP to determine if there
20 existed an alternative standard that, one, would achieve the same energy efficiency goals
21 as ENERGY STAR and, two, and was less costly to builders and buyers of covered
22 buildings. After enactment of Bill 30-07, DEP conducted a comprehensive analysis of the
23 following alternative standards: the 2009 International Energy Conservation Code,
24 referred to as IECC-2009; the National Association of Home Builders National Green
25 Building Standard; and the Department of Energy's Builder Challenge. DEP concluded
26 that IECC-2009, with a local modification that would require a blower door test as a
27 method of verifying compliance, would achieve the same energy goals as ENERGY
28 STAR. We also concluded that the cost of complying with this alternative standard would
29 be comparable to the cost of complying with ENERGY STAR. However, based on the
30 available data, we were unable to conclude with certainty that the cost of complying with
31 this alternative standard would be less than the cost of complying with ENERGY STAR,
32 which was the standard in 30-07. The state recently adopted IECC-2009 as the state
33 energy code, effective October 1, 2009, and mandated that all local jurisdictions adopt this
34 code by April 1, 2010. The Department of Permitting Services has drafted proposed
35 regulations that would amend the County's building code to adopt IECC-2009. The
36 proposed regulations will be published in the December 2009 *County Register* and
37 submitted to the Council in early 2010. In light of the comparability of IECC-2009 and
38 ENERGY STAR guidelines, the County Executive recommends that the Council make the
39 final decision regarding the appropriate energy conservation standard for covered
40 buildings under 30-07 at the same time that it considers the proposed regulations to adopt
41 IECC-2009. This would allow the Council to obtain a full understanding of how IECC-2009
42 relates to ENERGY STAR before making a final decision regarding the appropriate

November 24, 2009



1 standard for applicable residential homes. Be happy to answer any questions the Council
2 may have.

3
4 COUNCIL PRESIDENT ANDREWS:

5 Thank you, Mr. Edwards. Our next speaker is Randy Melvin.

6
7 RANDY MELVIN:

8 Good afternoon, President Andrews and Councilmembers. My name is Randy Melvin, and
9 I'm here representing the Maryland-National Capital Building Industry Association. I'm the
10 chairman-elect for the BIA's Codes and Standards committee for next year. Raquel has
11 asked me to step in today. She is currently out on medical leave. We would like to thank
12 the Department of Environmental Protection -- Stan and Eric in particular -- Department of
13 Permitting Services -- George and Hadi-- for meeting with industry members to address
14 how best to increase energy efficiency in new homes and to address our concerns. The
15 industry was concerned that the January 1, 2010, mandate created by Bill 30-07 ignored
16 alternative programs which achieved equal or better energy efficiencies. After much study
17 and analysis, DEP concluded that the 2009 changes to the Energy Conservation Code
18 could achieve the efficiency goals set in Bill 30-09. We support Bill 44-09, as it creates the
19 opportunity for the Council to evaluate the consistency provided by using a code standard
20 to increase energy efficiency. We look forward to participating in the worksessions with
21 the Council as it reviews the 2009 IECC and working with DPS on the regulations for new
22 codes. Thank you.

23
24
25 COUNCIL PRESIDENT ANDREWS:

26 Thank you, Mr. Melvin. Council Vice President Berliner has a question or comment.

27
28 COUNCIL VICE PRESIDENT BERLINER:

29 Mr. Melvin, I take issue with the notion that we somehow ignored alternatives. I believe
30 our legislation explicitly called for precisely this type of analysis in the event that there
31 were alternatives that indeed were comparable and less costly to your industry. So I am
32 comfortable that, if the analysis of our experts with respect to this, is that it does in fact
33 achieve comparable results, that that's -- that's a good thing. My question for Mr. Edwards
34 is that, it was certainly my intention, with respect to the legislation, that ENERGY STAR, of
35 course, is a living, breathing document, and it gets stronger. What is your thought with
36 respect to what the County would have to do -- let's assume the following hypothetical:
37 that ENERGY STAR gets stronger than the code that you are currently recommending.
38 Your thoughts with respect to the County's posture at that point?

39
40 RANDY MELVIN:

41 Well, we expect that to happen. Our understanding is that ENERGY STAR will be updated
42 in 2011.

November 24, 2009



1
2 COUNCIL VICE PRESIDENT BERLINER:

3 Yes.

4
5 RANDY MELVIN:

6 Of course, immediately after that will come the 2012 version of the Energy Conservation
7 Code. So I think we're going to be in the same situation of perhaps adopting a standard or
8 a guideline that will immediately be equaled or surpassed by the energy code. And it's the
9 feeling of DEP, and I know the feeling of the building industry and the Department of
10 Permitting Services, that we're much better off achieving energy efficiency standards
11 through codes as opposed to alternative guidelines. The building industry understands
12 codes. They're used to working with them. They work with them in all other aspects of the
13 building industry, so to have the same thing on energy would be useful. So I think -- I think
14 we're going to have to revisit the issue and see what happens to ENERGY STAR, as well
15 as what happens to the 2012 version of the code.

16
17 COUNCIL VICE PRESIDENT BERLINER:

18 The codes have been a little slower in the past. My hope is that the building industry
19 comes on board, and in the past, it has been somewhat resistant to strong energy codes.
20 So my hope is that we don't have this disconnect that forces us to make a choice.

21
22 RANDY MELVIN:

23 I think it's a "stay tuned" sort of story, and we'll have to come back and talk about it.

24
25 COUNCIL VICE PRESIDENT BERLINER:

26 Thank you, sir.

27
28 COUNCIL PRESIDENT ANDREWS:

29 Thank you, Council Vice President Berliner, and thank you both. That concludes this
30 public hearing, and we have one more public hearing this afternoon, after which we have
31 action on that public hearing. And the next public hearing is on a resolution to approve a
32 County Guaranteed Bond Financing Plan for the Housing Opportunities Commission for
33 the Wheaton MetroPointe Apartments development. Action is scheduled immediately
34 following this hearing. There are no speakers for this hearing. There is a Management and
35 Fiscal Policy Committee recommendation on the matter, and I'll turn to the chair of that
36 committee, Councilmember Trachtenberg, for the committee's recommendation.

37
38 COUNCILMEMBER TRACHTENBERG:

39 Thank you, Councilmember Andrews. This is -- was discussed briefly within the MFP
40 Committee yesterday. Obviously, we are familiar with the project, which is a very
41 successful HOC endeavor, and we considered the item before us as a housekeeping
42 item. Basically, there was a request that was received from the Council President asking

November 24, 2009



1 approval for continued use of the County's guarantee for the issuance of \$33 million in
2 tax-exempt bonds for 2 years. There are assorted memos attached in the packet provided
3 to all of us today. I'd be happy to go over the specifics if it's requested by a colleague. And
4 again, the recommendation from the MFP Committee was a unanimous recommendation
5 to support the request as provided.

6
7 COUNCIL PRESIDENT ANDREWS:

8 OK. Thank you, Chair Trachtenberg, for the committee's report. And I don't see any
9 comments or questions, so I think we're ready to vote on it. All those in favor of the
10 resolution to approve County Guaranteed Bond Financing Plan for the Housing
11 Opportunities Commission MetroPointe Apartments development, please raise your hand.
12 That is unanimous, 9-0. All right. We are finished for the afternoon, and thank you all, and
13 happy Thanksgiving. We'll see you Monday and Tuesday next week.

14